

Exhibit 36

1 HIGHLY CONFIDENTIAL - B. McDADE

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9 Debtors.

10 -----X

11
12 * * *HIGHLY CONFIDENTIAL* * *

13 DEPOSITION OF BART McDADE

14 New York, New York

15 September 2, 2009

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 24045

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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 above the assumption of short positions against</p> <p>3 the long position?</p> <p>4 A. These were responsibilities and</p> <p>5 expenses that clearly would have to be paid and</p> <p>6 honored to run the businesses going forward.</p> <p>7 Q. Let me put the question another way.</p> <p>8 Did you understand the transaction at issue here</p> <p>9 to be basically a wash from the perspective of</p> <p>10 LBI, the broker-dealer, an equivalent exchange</p> <p>11 of assets?</p> <p>12 MR. HUME: Objection. Vague and</p> <p>13 ambiguous.</p> <p>14 A. I understood the transaction to be an</p> <p>15 assumption of the assets and liabilities. It's</p> <p>16 clear Barclays was negotiating, as any purchaser</p> <p>17 would, in their opinion, in its most efficient</p> <p>18 fashion, and we were responsible as Lehman to</p> <p>19 negotiate against their efficient process.</p> <p>20 Q. If I understand your last answer, sir,</p> <p>21 correctly, you're essentially describing to me</p> <p>22 that a purchaser wants to pay the least amount</p> <p>23 possible and the seller wants to get the most?</p> <p>24 A. Correct.</p> <p>25 Q. My question goes to the end result,</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 not the goals of the negotiators.</p> <p>3 Did you understand the end results of</p> <p>4 this transaction to be, from the perspective of</p> <p>5 LBI, essentially a wash, an equivalent -- with</p> <p>6 Barclays assuming liabilities, including</p> <p>7 employee liabilities and contract cure</p> <p>8 amounts --</p> <p>9 A. Yes.</p> <p>10 Q. -- basically equivalent to the assets?</p> <p>11 A. Yes.</p> <p>12 Q. And did that equivalent exchange</p> <p>13 include or exclude the \$4.25 billion in assumed</p> <p>14 liabilities shown on that financial schedule?</p> <p>15 A. It ultimately included what those</p> <p>16 figures ultimately ended up being, but did</p> <p>17 not -- it did not --</p> <p>18 Are you talking about the final</p> <p>19 transaction consummated or are you talking</p> <p>20 about --</p> <p>21 In concept, yes.</p> <p>22 Q. Okay. When you say "in concept, yes,"</p> <p>23 you're talking about the deal as it was --</p> <p>24 A. Cure payments -- as the final details</p> <p>25 of cure payments and compensation.</p>
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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Let's do this with time periods, okay?</p> <p>3 So --</p> <p>4 A. Fine.</p> <p>5 Q. -- on the 16th, as reflected in the</p> <p>6 Asset Purchase Agreement dated as of September</p> <p>7 16th and signed on that day, was it contemplated</p> <p>8 that this would be an equivalent exchange of</p> <p>9 assets, a wash?</p> <p>10 A. It ended up being an equivalent</p> <p>11 exchange of assets and liabilities, yes. Yes.</p> <p>12 Q. On the 16th?</p> <p>13 A. On the 16th, yes.</p> <p>14 Q. And for it to be an equivalent</p> <p>15 exchange of assets -- withdrawn.</p> <p>16 And within that equivalent exchange of</p> <p>17 assets --</p> <p>18 MR. BUCKLEY: Assets and liabilities.</p> <p>19 MR. GAFFEY: That's sort of where I'm</p> <p>20 going.</p> <p>21 Q. Within that equivalent exchange would</p> <p>22 be included the \$4.25 billion in assumed</p> <p>23 liabilities, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And in order for it to be an</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 equivalent exchange of assets, the \$4.25 billion</p> <p>3 in assumed liabilities would have to be</p> <p>4 accurately stated?</p> <p>5 A. Correct.</p> <p>6 Q. And if the actual assumed liabilities</p> <p>7 were less than \$4.25 billion, it would not be an</p> <p>8 equivalent exchange of assets, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. It would be a deal to Barclays'</p> <p>11 benefit if the assumed liabilities were lower</p> <p>12 than \$4.25 billion, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And I think you told me over the week</p> <p>15 the amount of accrued liabilities for cure</p> <p>16 dropped from 2 billion to between 7 and 8</p> <p>17 hundred million dollars?</p> <p>18 A. Correct.</p> <p>19 Q. Was there any change in the assets</p> <p>20 that would be delivered to keep it in equivalent</p> <p>21 exchange?</p> <p>22 A. The assets changed over the course of</p> <p>23 the week dramatically.</p> <p>24 Q. Okay. Was it --</p> <p>25 A. So there was a different nature of the</p>

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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Let me try and rephrase it. The</p> <p>3 quantum of securities available that can</p> <p>4 delivered to Barclays drops because of those</p> <p>5 three factors you told me about, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know if that quantum was more</p> <p>8 or less than the amount of the financing</p> <p>9 Barclays supplied in connection with the repo,</p> <p>10 the 45 billion?</p> <p>11 A. I understand.</p> <p>12 I don't know the answer.</p> <p>13 Q. Do you know if the quantum of those</p> <p>14 securities dropped below the amount in the</p> <p>15 Barclays repo consisting of the amount financed</p> <p>16 plus the haircut, the higher number?</p> <p>17 A. Yes.</p> <p>18 Q. And I take it from your testimony</p> <p>19 before the break that one of the things that was</p> <p>20 under discussion was finding assets sufficient</p> <p>21 to deliver a particular amount to Barclays,</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. What was the amount?</p> <p>25 A. Again, the process that we went</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 through over the course of the week was to find</p> <p>3 the market valuation of the assets that were</p> <p>4 available.</p> <p>5 In this case, the quantum of assets,</p> <p>6 using your term, had changed. We were going</p> <p>7 through a process again of finding the value of</p> <p>8 those assets that were available to be purchased</p> <p>9 by the purchaser, in this case, Barclays. They</p> <p>10 still were in the position where the value of</p> <p>11 the liabilities was reasonably similar. The</p> <p>12 form had changed in terms of it being their repo</p> <p>13 now, but there were still the responsibilities</p> <p>14 around cure payments and the compensation.</p> <p>15 So we were looking for, at that point</p> <p>16 of view, as a result of the current process of</p> <p>17 valuing assets, for more assets within Lehman</p> <p>18 that weren't part of the process of the repo,</p> <p>19 all of the repo.</p> <p>20 Q. So you were looking for assets outside</p> <p>21 the scope of the repo?</p> <p>22 A. Correct.</p> <p>23 Q. To add to the body of assets that</p> <p>24 could be transferred to Barclays?</p> <p>25 A. Correct.</p>
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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. So maybe I'm asking the same question,</p> <p>3 but what was the total amount of -- total value</p> <p>4 of assets you were looking for? You knew you</p> <p>5 wanted to add to what was in the repo, right?</p> <p>6 Yes?</p> <p>7 A. That's -- that's correct.</p> <p>8 Q. How much more did you want to add to</p> <p>9 what was in the repo?</p> <p>10 A. We were still going through the</p> <p>11 process of valuing. We knew we had a gap. I</p> <p>12 wasn't part of the specific meeting, so I can't</p> <p>13 answer the question specifically, but there was</p> <p>14 still a gap.</p> <p>15 Q. Okay. A gap between what and what?</p> <p>16 A. The rough assets and liabilities</p> <p>17 matching.</p> <p>18 Q. So, in the search for additional</p> <p>19 assets to deliver to Barclays, one of the tasks</p> <p>20 was to find enough assets to match the</p> <p>21 liabilities that Barclays was undertaking,</p> <p>22 correct?</p> <p>23 A. Our task was to understand all the</p> <p>24 assets -- within Lehman, our task was to</p> <p>25 understand all the assets and make sure we had</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 proper valuation in terms of understanding the</p> <p>3 value of those assets and to get the best price</p> <p>4 for Lehman for those assets.</p> <p>5 Q. Okay.</p> <p>6 A. It was clear, yes, I have stated I</p> <p>7 think previously, it was clear Barclays was</p> <p>8 trying to find a means to provide against the</p> <p>9 liabilities of cure payments and compensation.</p> <p>10 Q. Okay. So I just want to run down the</p> <p>11 liability side sort of full by category from the</p> <p>12 bottom up. It's the comp liability, correct?</p> <p>13 A. Correct.</p> <p>14 Q. The cure liability, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And the liabilities that are incident</p> <p>17 to the securities themselves, correct?</p> <p>18 A. Correct.</p> <p>19 Q. The short side of long position, yes?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And included in the mathematics</p> <p>22 of the total amount of liabilities that Barclays</p> <p>23 would be undertaking were whatever the amounts</p> <p>24 were of comp and cure, correct?</p> <p>25 A. That's correct.</p>

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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Okay. So as the amount of -- as over</p> <p>3 the week the amount of liability for cure</p> <p>4 dropped, you would agree with me then that the</p> <p>5 price -- that the amount of value that had to be</p> <p>6 given to Barclays should have dropped in</p> <p>7 accordance with that, correct?</p> <p>8 A. Correct.</p> <p>9 Q. So when the value of the cure</p> <p>10 liability dropped from its original number of</p> <p>11 2.25 and then to 1.5 and then down to the range</p> <p>12 of 7 or 8 hundred million, the value of</p> <p>13 securities attributable to that as it were</p> <p>14 should have dropped, correct?</p> <p>15 A. I want to make a correction to the</p> <p>16 statement I made earlier. I was confusing the</p> <p>17 15c3 7 to 8 hundred figure with cure. So the</p> <p>18 last figure that I do recall is the billion and</p> <p>19 a half in cure.</p> <p>20 Q. As the number dropped from 2.25 to --</p> <p>21 A. To 1.5.</p> <p>22 Q. -- to 1.5?</p> <p>23 A. To answer your question, though, yes.</p> <p>24 Q. So, to follow up on your clarification</p> <p>25 a little bit, your memory is not now that it</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 dropped from 1.5 further during the week?</p> <p>3 A. That's correct.</p> <p>4 Q. It stayed at 1.5 from --</p> <p>5 A. To the best of my recollection, yes.</p> <p>6 Q. Let me put the "from" and "to" in</p> <p>7 there so we have a good record.</p> <p>8 It stayed at 1.5 from September 17 to</p> <p>9 the closing on September 22?</p> <p>10 A. To the best of my recollection, yes.</p> <p>11 Q. Was any work being done between</p> <p>12 September 17 and September 22 to fine-tune that</p> <p>13 number? Was Mr. Kelly continuing to look at it?</p> <p>14 A. Yes, he was.</p> <p>15 Q. And when Mr. Kelly and his crew</p> <p>16 continued to look at it, did they ever change</p> <p>17 that number from \$1.5 billion?</p> <p>18 A. I don't know.</p> <p>19 Q. I'll go back to a question I asked you</p> <p>20 before the break. Having now sort of refreshed</p> <p>21 your recollection about whether or not there was</p> <p>22 this other drop, do you have a better</p> <p>23 recollection now of whether or not Mr. Kelly</p> <p>24 came to you during the week and told you the</p> <p>25 trade payable number was overstated by about a</p>
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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 billion dollars?</p> <p>3 A. I don't have a -- I don't have a</p> <p>4 better recollection. I tried to describe my</p> <p>5 recollection of the week with Mr. Kelly being in</p> <p>6 and around Ian Lowitt's office and in and around</p> <p>7 my office several times, some of which we were</p> <p>8 obviously talking because I was imploring</p> <p>9 accurate assessment of what the cure payment</p> <p>10 number was.</p> <p>11 Q. Who were you imploring to give an</p> <p>12 accurate assessment of what the cure payment</p> <p>13 was?</p> <p>14 A. Ian Lowitt and Martin Kelly.</p> <p>15 Q. And you were imploring Lowitt and</p> <p>16 Martin Kelly to get an accurate assessment of</p> <p>17 the cure payment number because it related to</p> <p>18 the amount of value that Lehman had to give to</p> <p>19 Barclays, correct?</p> <p>20 A. Exactly. And the number was changing.</p> <p>21 Q. So as the number dropped -- looking at</p> <p>22 Exhibit 19, the financial statement upon which</p> <p>23 the original transaction was based, that number</p> <p>24 drops from 2.25 for cure. The assets to be</p> <p>25 delivered should drop dollar for dollar, right?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. That's correct.</p> <p>3 Q. Was there a point --</p> <p>4 A. Assuming that they were all the same</p> <p>5 assets and the markets hadn't changed.</p> <p>6 Q. We were going to have to take into</p> <p>7 account this --</p> <p>8 A. That would be correct.</p> <p>9 Q. -- dynamic, as you call it, that takes</p> <p>10 place during the week, but as a basic matter in</p> <p>11 the deal as it was contemplated, as the accrued</p> <p>12 liabilities dropped, the value to Barclays</p> <p>13 should also drop, yes?</p> <p>14 A. That's correct.</p> <p>15 Q. And I guess it's also so that, to the</p> <p>16 extent the value of any assets went up, the</p> <p>17 price should change as well, correct?</p> <p>18 A. Absolutely.</p> <p>19 Q. Barclays should take on more</p> <p>20 liabilities, yes? Or pay more cash?</p> <p>21 A. Or pay more cash.</p> <p>22 Q. And if there's an imbalance at the end</p> <p>23 of the day between the accrued liability for, to</p> <p>24 pick one, cure?</p> <p>25 A. Uh-huh.</p>

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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. And the total value that Barclays</p> <p>3 is -- actually, withdrawn.</p> <p>4 I want to ask you to put one other</p> <p>5 piece in here before I ask you this question.</p> <p>6 Part of the transaction contemplated a cash</p> <p>7 payment from Barclays to Lehman of \$250 million,</p> <p>8 correct?</p> <p>9 A. Yes, that's correct.</p> <p>10 Q. And as far as -- apart from the real</p> <p>11 estate?</p> <p>12 A. That's correct.</p> <p>13 Q. That's the only cash that's moving</p> <p>14 from Barclays to Lehman, right?</p> <p>15 A. That's correct.</p> <p>16 Q. Everything else in the form of</p> <p>17 consideration is in the form of assumed</p> <p>18 liabilities, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. So if an imbalance occurs at the end</p> <p>21 of the week where the -- when the deal is closed</p> <p>22 where the amounts of the accrued -- of the</p> <p>23 assumed liabilities drops, then either you have</p> <p>24 to give them fewer assets or they have to pay a</p> <p>25 bigger cash price to make the deal balanced,</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 correct?</p> <p>3 A. To make the deal balanced, that's</p> <p>4 correct.</p> <p>5 Q. And it was always the view that the</p> <p>6 deal should balance, correct?</p> <p>7 A. It was always Barclays' view that the</p> <p>8 deal should balance. It was always our view to</p> <p>9 get the market value for the assets and the</p> <p>10 businesses we were selling at the best price.</p> <p>11 Q. I beg your pardon. Did you finish</p> <p>12 your answer?</p> <p>13 A. I did.</p> <p>14 Q. You wanted either a balance or better,</p> <p>15 in Lehman's favor, correct?</p> <p>16 A. We wanted the best price for Lehman,</p> <p>17 right.</p> <p>18 Q. At any point did you think you were</p> <p>19 selling the assets of Lehman for less than their</p> <p>20 value?</p> <p>21 A. No. The context of the marketplace,</p> <p>22 the illiquidity in the marketplace, the</p> <p>23 volatility, the tumultuous, cannot begin to</p> <p>24 describe how illiquid all the markets were over</p> <p>25 the course of the preceding weeks and especially</p>
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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 that week.</p> <p>3 Q. And that type of illiquidity would be</p> <p>4 reflected when a regulator broker-dealer would</p> <p>5 mark its books in the market, wouldn't it?</p> <p>6 A. It would be reflected in marking to</p> <p>7 market on a regular basis, yes, absolutely.</p> <p>8 Q. And it would be the responsibility of</p> <p>9 the CFO to make sure that that illiquidity was</p> <p>10 taken into account when marking to market was</p> <p>11 done on the books of company, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Whether or not that illiquidity was</p> <p>14 taken into account in marking the books to</p> <p>15 market would be a question you would ask of the</p> <p>16 CFO, Ian Lowitt, correct?</p> <p>17 A. I would ask that, yes.</p> <p>18 Q. To go back to the point that you</p> <p>19 clarified, sir, with regard to your memory of</p> <p>20 the drop in the amount of assumed liability for</p> <p>21 cure, we still have a drop here from 2.25 to</p> <p>22 1.5, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Is it still your testimony that was</p> <p>25 reflected in the Clarification Letter?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. I believe I read that in the -- I</p> <p>3 remember that from the actual bankruptcy,</p> <p>4 Mr. Miller talking to the bankruptcy.</p> <p>5 Q. And that was when Mr. Miller told the</p> <p>6 bankruptcy court that the assumption of</p> <p>7 liabilities --</p> <p>8 A. Was 1.5.</p> <p>9 Q. That would be when Mr. Miller on the</p> <p>10 19th told the bankruptcy court that the</p> <p>11 assumption of liabilities for cure and comp</p> <p>12 would be the same as he had described at the</p> <p>13 prehearing on the 17th, correct?</p> <p>14 A. Exactly, which is the 1.5 figure.</p> <p>15 Q. And the 20.0 including Barclays'</p> <p>16 modeling?</p> <p>17 A. Correct.</p> <p>18 Q. To your knowledge, sir, can you tell</p> <p>19 me anyplace in what was filed or told to the</p> <p>20 court that the fact that the \$2 billion was</p> <p>21 based on Barclays' modeling was disclosed?</p> <p>22 A. I don't recall the specifics of</p> <p>23 whether Barclays modeling was described, no.</p> <p>24 Q. My question -- I guess my question</p> <p>25 should be a little more general. Do you recall</p>

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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. I don't know.</p> <p>3 Q. Did you talk to Mr. Ricci, talk or</p> <p>4 otherwise communicate with Mr. Ricci about this</p> <p>5 Friday project to find additional value to</p> <p>6 transfer to Barclays?</p> <p>7 A. Did I talk to Mr. Ricci specifically?</p> <p>8 No, I did not. Other than he would have been</p> <p>9 present, I believe, in the morning meeting.</p> <p>10 Q. Do you recall Mr. Ricci saying to you</p> <p>11 in substance that he wouldn't let this trade</p> <p>12 blow up by being piggish?</p> <p>13 A. No, Mr. Ricci never said that to me.</p> <p>14 Q. You're certain he never said that to</p> <p>15 you?</p> <p>16 A. He never said that to me. I'm</p> <p>17 certain.</p> <p>18 Q. How much additional value was found in</p> <p>19 15c3 and unencumbered assets?</p> <p>20 A. I believe the 15c3 was the figure that</p> <p>21 I was confusing before, was between 750 and 800</p> <p>22 million of value, and I believe the unencumbered</p> <p>23 assets was a billion-9.</p> <p>24 Q. So with 2.7 billion in additional</p> <p>25 value, did the deal now balance, in your view?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Yes.</p> <p>3 Q. Did you know whether it balanced with</p> <p>4 an addition 2.7 billion in additional value?</p> <p>5 A. I knew that the deal team had gone</p> <p>6 through the same process through the course of</p> <p>7 all the way into the afternoon and evening. I</p> <p>8 specifically was unable at that moment in time,</p> <p>9 given where I was sitting and obligated to do.</p> <p>10 Q. Uh-huh.</p> <p>11 A. But, yes, I felt comfortable given who</p> <p>12 was in the process and what was process was.</p> <p>13 Q. And the balance, this concept of a</p> <p>14 balance in the transaction at this point still</p> <p>15 depended on the 1.5 billion in assumed</p> <p>16 liabilities for trade payables and 2 billion in</p> <p>17 assumed liabilities for compensation, correct?</p> <p>18 A. Yes, that's correct.</p> <p>19 Q. And it also depended on an accurate</p> <p>20 valuation of the collateral actually being</p> <p>21 transferred, correct?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. When those three elements are added</p> <p>24 up -- I'm sorry, when those elements are</p> <p>25 compared, your view of the deal was they should</p>
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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 balance and there would be no immediate gain to</p> <p>3 Barclays, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Did Barclays share with you or with</p> <p>6 anyone on the Lehman team the value that they</p> <p>7 did determine applied to the collateral in the</p> <p>8 Repurchase Agreement?</p> <p>9 A. No.</p> <p>10 Q. Did they ever tell you what the amount</p> <p>11 of the --</p> <p>12 A. To me?</p> <p>13 Q. You or, to your knowledge, anyone</p> <p>14 under your supervision.</p> <p>15 A. Of course they would have gone through</p> <p>16 the process of valuing the collateral, just as</p> <p>17 they had done, again, all week in terms of the</p> <p>18 assets.</p> <p>19 Q. Yes.</p> <p>20 A. So the answer: The deal team, yes.</p> <p>21 To me, no.</p> <p>22 Q. Did you learn from the deal team that</p> <p>23 Barclays said we're short by X amount?</p> <p>24 A. Yes, absolutely. Over the course of</p> <p>25 time.</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. And over the course of time did the</p> <p>3 deal team let you know what X amount was, what</p> <p>4 the shortfall was?</p> <p>5 A. Ultimately, the shortfall --</p> <p>6 ultimately, the satisfaction of the process of</p> <p>7 the deal teams working together got to a point</p> <p>8 where Barclays would do a transaction.</p> <p>9 So, again, you're pushing towards this</p> <p>10 notion of something that we were pushing toward</p> <p>11 correct valuation of the assets that we had on</p> <p>12 our books. They were pushing for a deal on the</p> <p>13 best terms. There was no target given other</p> <p>14 than continued valuation of these assets and</p> <p>15 trying to get and extract market valuation for</p> <p>16 them. In the process, it ultimately consummated</p> <p>17 with Barclays being comfortable with the</p> <p>18 transaction which ultimately contemplated in</p> <p>19 roughly the assets and liabilities matching.</p> <p>20 Q. And given what you heard in the</p> <p>21 bankruptcy hearing on the 19th of September,</p> <p>22 where you heard the deal described to the judge</p> <p>23 as essentially a balance --</p> <p>24 A. Right.</p> <p>25 Q. -- it would have been important in</p>

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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 your view, sir, to tell the judge if it was not</p> <p>3 in fact in balance because that's a different</p> <p>4 deal, is it not?</p> <p>5 A. Most definitely, yes, sir.</p> <p>6 Q. Mr. McDade, I'm handing you what has</p> <p>7 previously been marked as Exhibits 24 and 25.</p> <p>8 Ask you if you recognize those documents?</p> <p>9 A. Yes, I do.</p> <p>10 Q. What are they?</p> <p>11 A. The First Amendment to the purchase</p> <p>12 agreement and second is the clarifying -- I</p> <p>13 believe the clarifying letter.</p> <p>14 Q. Now, did you have any involvement with</p> <p>15 the negotiation of the business terms of the</p> <p>16 First Amendment?</p> <p>17 A. Yes.</p> <p>18 Q. Can you briefly describe to me what</p> <p>19 your involvement was?</p> <p>20 A. As I said, the involvement that I had</p> <p>21 had to do with the excluded assets and purchased</p> <p>22 assets change with respect to the residential</p> <p>23 mortgages.</p> <p>24 Q. And then the Clarification Letter,</p> <p>25 sir, dated as of September 20, Exhibit 25, were</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 you involved in the negotiation of the business</p> <p>3 terms of this letter?</p> <p>4 A. I was involved in some of the</p> <p>5 negotiation terms of some of this, yes.</p> <p>6 Q. Which parts?</p> <p>7 A. For example, clarification around the</p> <p>8 IMD business.</p> <p>9 Q. That's paragraph 2?</p> <p>10 A. Paragraph 2 on page 3. I certainly</p> <p>11 was understanding and knowledgeable about the</p> <p>12 cash, the DTC issue, which is paragraph D up</p> <p>13 above; the clarification of the Lehman name and</p> <p>14 licensing for two years; the subleases for</p> <p>15 offices I would have been involved in, page 5,</p> <p>16 since they inherited certain business</p> <p>17 obligations.</p> <p>18 That's it, to the best of my</p> <p>19 recollection.</p> <p>20 Q. Did you have any involvement in the</p> <p>21 negotiation of the terms reflected in paragraph</p> <p>22 1, Purchased Assets?</p> <p>23 A. Specifically, no. Generally, I was</p> <p>24 aware of.</p> <p>25 Q. Who on the team of businesspeople was</p>
Page 188	Page 189
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 involved in negotiating the terms of paragraph</p> <p>3 1, Purchased Assets?</p> <p>4 A. So that would have been -- that would</p> <p>5 have been our -- that would have been a</p> <p>6 combination of Kelly, Lowitt, Kirk, McGee,</p> <p>7 Berkenfeld.</p> <p>8 Q. Any others?</p> <p>9 A. Our advisors, our advisors from Weil.</p> <p>10 That's it.</p> <p>11 Q. Would you turn to paragraph 13.</p> <p>12 Actually --</p> <p>13 A. Page 13 or paragraph?</p> <p>14 Q. Actually, I'm in the wrong place.</p> <p>15 Hold on one second.</p> <p>16 Would you turn to page 4, paragraph 9,</p> <p>17 please. You with me?</p> <p>18 A. Uh-huh.</p> <p>19 Q. That section concerns the deletion of</p> <p>20 a purchase price adjustment?</p> <p>21 A. Right, the original deal had</p> <p>22 contemplated a hold-back, if you will, if</p> <p>23 Barclays earned profits and profits going back</p> <p>24 to the Lehman estate.</p> <p>25 Q. Do you recall, we can show you, but</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 maybe to save a little time, do you recall</p> <p>3 generally that the terms of that purchase price</p> <p>4 adjustment were that Lehman would share in the</p> <p>5 upside of any profit on the long position up to</p> <p>6 a cap of 750 million?</p> <p>7 A. I recall a cap and I recall a</p> <p>8 construct of -- you know, I don't know all the</p> <p>9 specifics, but yes.</p> <p>10 Q. Why did that come out in the</p> <p>11 Clarification Letter?</p> <p>12 A. Because the original balance sheet</p> <p>13 changed so dramatically from Tuesday to Friday,</p> <p>14 and a combination of the changes, the Barclays</p> <p>15 assumption of the repo and negotiation, to be</p> <p>16 blunt.</p> <p>17 Q. When you say "negotiation, to be</p> <p>18 blunt," the fact is Barclays just said that's</p> <p>19 got to come out for us to do the deal; is that</p> <p>20 right?</p> <p>21 A. Well, Barclays was ascribing a value</p> <p>22 to it like we were, and as part of the process,</p> <p>23 no, I'm not -- I'm not suggesting Barclays</p> <p>24 said -- those are your words, no.</p> <p>25 Over the course of the week, value</p>

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<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 finance area.</p> <p>3 Q. Did he work under Kelly and Lowitt or</p> <p>4 with Kelly and Lowitt?</p> <p>5 A. Yes. Yes, he did.</p> <p>6 Q. Under?</p> <p>7 A. Under.</p> <p>8 Q. And you recognize the names in the</p> <p>9 "to" line here, Gary Romain, James Walker, TJ</p> <p>10 Gavenda?</p> <p>11 A. No, sir.</p> <p>12 Q. Now, you'll see on the -- the e-mail</p> <p>13 itself reads "Copy of Opening Balance Sheet," do</p> <p>14 you see that?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And that balance sheet, sir, covers</p> <p>17 first cash and cash equivalent and then a</p> <p>18 variety of inventory and the 15c3 stuff that</p> <p>19 we've been talking about, do you see that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And it also covers the accrued bonuses</p> <p>22 at 2 billion and the cure payments at the</p> <p>23 original number of 250, do you see that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And it reflects a valuation of the</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 inventory, and by this point, by the point of</p> <p>3 this -- by the date this is sent, which is</p> <p>4 Sunday, September 21, the inventory we're</p> <p>5 talking about in the transaction is the</p> <p>6 inventory in the repo, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And this values the inventory</p> <p>9 of the repo at 44,880,000,000; is that right?</p> <p>10 A. That's what this document says.</p> <p>11 Q. And it puts the 15c3 amount at a</p> <p>12 billion, do you see that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And when you add in the cash and cash</p> <p>15 equivalents, it comes out to 52.8 billion, do</p> <p>16 you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And below the "Asset" line is the cash</p> <p>19 received from Barclays, and it recounts the 45</p> <p>20 billion for the repo. We talked about that</p> <p>21 number, right?</p> <p>22 A. Yes.</p> <p>23 Q. And the \$250 million cash payment?</p> <p>24 A. Yes.</p> <p>25 Q. Totals at 45-billion-250 and then</p>
Page 216	Page 217
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 takes accounts of the accrued bonuses and the</p> <p>3 cure payments, right?</p> <p>4 A. Yes.</p> <p>5 Q. And then there's a provision of equity</p> <p>6 of \$3.38 billion. Now, as I read this, sir,</p> <p>7 that would be equity to Barclays after the</p> <p>8 transaction, correct?</p> <p>9 A. I have not seen this document. I</p> <p>10 don't know what this is in terms of the equity</p> <p>11 line.</p> <p>12 Q. Well, if the equity line is meant to</p> <p>13 indicate the equity to Barclays in the amount of</p> <p>14 3.380, given what we've talked about about the</p> <p>15 deal being in balance --</p> <p>16 A. I didn't create the document. I've</p> <p>17 never seen the document before.</p> <p>18 Q. I understand.</p> <p>19 A. I prefer not to interpret it.</p> <p>20 MR. BUCKLEY: Let the witness answer.</p> <p>21 A. I prefer not to interpret it. I don't</p> <p>22 know what it means.</p> <p>23 Q. If there were an equity component in</p> <p>24 the deal on the opening day, sir, of \$3.38</p> <p>25 billion, that deal would not be in balance; is</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 that right?</p> <p>3 MR. BUCKLEY: Objection to form and</p> <p>4 foundation.</p> <p>5 A. That's correct.</p> <p>6 Q. And the deal that you made was one to</p> <p>7 be in balance; is that right?</p> <p>8 MR. BUCKLEY: Objection.</p> <p>9 MR. HUME: Objection. Vague and</p> <p>10 ambiguous.</p> <p>11 A. That's correct.</p> <p>12 Q. So if the opening day balance sheet</p> <p>13 for the deal reflected that Barclays had \$3.38</p> <p>14 billion in equity, that's not the deal you made,</p> <p>15 is it?</p> <p>16 MR. HUME: Objection to form and calls</p> <p>17 for a legal conclusion.</p> <p>18 MR. BUCKLEY: Objection. Foundation.</p> <p>19 A. That's correct.</p> <p>20 Q. And it wouldn't be consistent with the</p> <p>21 deal that you made, would it?</p> <p>22 A. It would not be consistent, that's</p> <p>23 correct.</p> <p>24 Q. Now, was there ever a time, sir,</p> <p>25 where -- at around the time of the hearing</p>

Exhibit 37

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al, (Jointly Administered)

9 Debtors.

10 -----x

11
12 DEPOSITION OF SAUL BURIAN

13 New York, New York

14 December 17, 2009

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 26532
19
20
21
22
23
24
25

BURIAN

Q. OK, was there anything else you thought I should know about Exhibit 338-B?

MS. TAGGART: Objection to form.

A. Yeah, yeah, I think the most important part of the whole conversation was the right side of the balance sheet, not the left, and that is Michael Klein said, hey, we are owed 45 and a half billion dollars, as you know, Saul, the extra liabilities we are assuming on the cures and employee severance is 4 and a quarter. Even after taking the 1.9 billion of additional securities, we are short, and this is about as close to a quote as I can tell you, is you made 2 billion dollars this weekend. If anything, you should be happy.

Q. Now, the 4.25 billion, what did you understand that to be comprised of?

A. There was, in some notes it is 4 billion, some it is 4.25, but that was described as Barclays -- Barclays was supposed to -- whether they did or not, we can talk about if you want, but at this time, my understanding was Barclays was going to be responsible for paying all the accrued compensation and severance

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transferred employees?

A. I did.

Q. And from that, did you understand what Barclays' potential exposure was?

A. No.

Q. Nobody gave you an estimate?

A. I just told you what the estimate was and then you asked me if I got it from the APA. The APA has words, it says I am picking up liabilities. I got the estimate from Weil and Lehman and at the court hearings. I didn't get that from the APA. I don't believe the APA has a number.

Q. But you had access to the APA?

A. I had more than access to the APA. I had a copy of the APA.

Q. And with respect to cure payments, did you understand that under Section 2.5 of the APA, Barclays had discretion concerning which contracts it would and would not assume?

MS. TAGGART: Objection, form, calls for a legal conclusion. The document speaks for itself.

A. I understood that Barclays had the

BURIAN

liabilities of the 10 to 12,000 Lehman employees that were supposed to -- that were going to go over to Barclays and -- and that included the severance for people who declined to go to Barclays and the accrued comp for those who went to Barclays and the other portion of this was someone's estimate of what the cure costs were for those contracts necessary to deliver the franchise to Barclays.

Q. OK. On the comp portion of what you just discussed, what did you understand the estimate of Barclays' potential exposure to be?

A. I only understood what people told me and I can go look at the balance sheet that's Exhibit 19, if it was 2 or 225, one of them had a 25 at the end. Whether it was the cure or the severance, but so someone -- I was told that that number was either 2 billion or 2.25 billion, was the assumed liabilities in respect of employees.

Q. You had the APA though, didn't you?

A. Sure.

Q. And you -- did you read the APA on, provisions on compensation and severance for

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right to cherry-pick those contracts necessary for the operation of the Business, capital B.

My comment earlier was not about cure, it was about the severance and accrued comp, not about the cure.

Q. What did you understand Weil Gotshal to have told the court concerning Barclays' exposure with respect to cure payments?

MS. TAGGART: Object to form.

MS. SCHAFFER: Objection.

A. Again, at the hearings I was at, you know, I don't remember particularly every single reference. I can tell you that my understanding at the time was that the liabilities that Barclays -- that Barclays was going to assume the cure, severance, and accrued comp of the Lehman employees.

Q. Did you understand that there was some uncertainty concerning the actual cure payments that Barclays would ultimately make?

MS. TAGGART: Object to form, foundation.

A. Sure. I understood that there was still open as to which contracts Barclays would

BURIAN

THE VIDEOGRAPHER: The time is now 4:57 p.m., we are now off the record.

(Recess)

THE VIDEOGRAPHER: This is the start of tape number 6. The time is now 5:10 p.m. we are now back on the record.

Q. We were on the subject of whether there was a balance in the transaction between assets and liabilities. Was it your understanding prior to the closing that there would be perfect, equivalent, mathematical balance between purchased assets and assumed liabilities?

A. I'm struggling with the word "perfect mathematical balance." And I don't know if there is a special meaning your attaching to that term. And certainly there was not a balance with respect to the 250 million for the franchise.

We believed and we still believe the franchise was worth more than that. But I did believe that when it came to the securities side and either the set-off or the repo, plus the liabilities assumed in respect

BURIAN

of employees and cures, that the intent of the transaction was that, based on the estimates as of closing, they would be in balance.

Q. So that view is limited to the tradeable financial assets?

MS. TAGGART: Object to form, mischaracterizes the testimony.

A. Yeah, tradeable -- some of these stocks were ill-liquids, they didn't trade much. But when you talk about the kind of things you find on Exhibits A and B, the securities, the -- they were supposed to -- I will get yelled at for not answering the question, so I am trying to be very, very careful to answer exactly the question.

So my understanding was that the other parts of the transaction were what they were, but vis-a-vis the Fed and then Barclays liabilities plus those assumed liabilities I referred to, they were supposed to match the assets, and net, net, net, what this transaction was about, was getting rid of the book, which is supposed to be a benefit to

BURIAN

us, and selling the real estate.

You could argue whether that was pure balance on the real estate, the appraisals were what they were, and I'm not challenging those appraisals, and then 250 for the franchise which that franchise could be worth more or less. So there was no balance there.

Q. OK. And you understood that there were a number of additional purchased assets in addition to the securities, correct?

MS. SCHAFFER: Objection.

A. There was a real estate, yes, there was the real estate and assets associated with the business, the franchise.

Q. And the list of purchased assets that we went through earlier today?

MS. TAGGART: Object to form.

A. I don't know if you are saying that as in addition to what I said or as further clarification to what I said because most of the list of assets and purchased assets relate to lawyers being careful in my understanding to define what is the franchise being transferred for 250 million dollars.

BURIAN

Q. You did not have a definite valuation for all purchased assets in the aggregate as of the closing, is that right?

A. Yes.

Q. You did not have a definite valuation of all the assumed liabilities in the aggregate as of the closing, is that correct?

A. Define valuation. We had -- we, again, 45.5 doesn't require a valuation. It is a number I'm told. There is a loan. The balance is rounded to approximately 45.5, that's a number. It is not a valuation.

So I had that and I had on the other liabilities, I had a description of how they were derived. One wouldn't value those liabilities. One would describe them and would perhaps, using your words from before, provide the estimate of them.

Q. So you did not have a definite valuation of all the assumed liabilities in the aggregate as of the closing?

MS. TAGGART: Object to form, asked and answered.

Q. Am I right about that?

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A. I did not know at the closing which contracts you were going to take. I did not know at the closing the precise exact number of what the severance and accrued comp was for employees. I didn't know if an employee might have died between Saturday and Monday. I just didn't know that.

Q. In other words, there were conditions that might bear on the amounts ultimately paid for comp and severance?

A. On the comp and severance side, sure.

Q. If you look at your copy of the APA which is in front of you tab A of Exhibit 92.

A. Exhibit 92.

Q. This is the exhibit you have in front of you, I am sorry, Exhibit 26. Exhibit 26. Looking at Exhibit 26, tab A, page 11, do you see there under Section 2.3, there is a list of assumed liabilities.

A. There are.

Q. Did you have a valuation for the assumed liabilities listed under categories A, B, D, E, and F?

A. You said A, I was reading A, what --

BURIAN

Q. Mr. Siegert writes, and this is as of September 19, I believe it is listed as Minneapolis time, so I believe in New York, it's about 10:11 a.m. Mr. Siegert writes, how did the Fed actions --

A. Minneapolis is one-hour difference?

Q. Is it one or two?

A. I think it is one, right?

Q. In any event, it is 8:11 a.m. in Minneapolis. And Mr. Siegert writes, "How did the Fed actions potentially impact the value of the book. Will Barclays maybe get a windfall selling our marked down book at some stupid price to the Feds. We can't let that happen."

Do you recall seeing that message from Mr. Siegert to Mr. Ridings?

A. I remember talking about this issue. I don't remember this particular e-mail.

Q. What was the issue that this e-mail addresses?

A. I mean, shortly after the Fed let -- after the government let Lehman fail, they announced a rescue package of some sort that allowed a modification to the program under

BURIAN

Q. B, D, E, and F. My question is whether you had a valuation or an estimated valuation for those categories as of the closing?

A. No.

Q. And looking at the next page, looking at categories G and H, did you have a valuation or an estimated valuation for those categories of assumed liabilities?

A. Not a specific valuation, no.

MR. STERN: Let's mark as the next exhibit e-mail dated September 19, 2008.

(Exhibit 475-B, e-mail dated September 19, 2008 marked for identification, as of this date.)

Q. I have put in front of you Exhibit 475-B. I will ask you to look at it and tell me if you recognize it?

A. I do not. I recognize it is an e-mail from Barry Ridings to Mark Shapiro.

Q. That's the e-mail at the top and then below that, there is an e-mail from Eric Siegert to Barry Ridings copying you. Do you see that?

A. Yup.

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which real estate and other types of securities could be borrowed against to preserve liquidity in the system and the question was whether or not there was -- whether or not that change in the Fed -- the first step was whether or not we were eligible for the Fed program because did we -- could we get liquidity and preserve the value of the assets that way.

And secondly, whether there was a quick flip going on where we were going to give assets based on Lehman's marks of value, but then the government program would ascribe higher values for the purposes of collateral to those same exact securities.

Q. And when Mr. Siegert referred to our marked down book, what do you understand he was referring to?

MS. TAGGART: Objection, foundation.

A. He was -- I believe he was referring to "our" as in Lehman, we take our -- we take things personally, and we were told that values had been dropping over the four to nine weeks prior to the sales transaction, and therefore, the assumption was that fair market value was

Exhibit 38

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *
9 VIDEOTAPED DEPOSITION OF ALVIN H. BROWN
10 New York, New York
11 Friday, January 8, 2010
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20 Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
21 JOB NO. 27031
22
23
24
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Page 6	Page 7
<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Creditors Committee.</p> <p>3 MS. LEE: Shinzong Lee from</p> <p>4 Simpson Thacher.</p> <p>5 MR. ROTHMAN: Seth Rothman from</p> <p>6 Hughes Hubbard on behalf of the SIPA</p> <p>7 Trustee.</p> <p>8 MR. THOMAS: And let me just note</p> <p>9 that this is part two of a 30(b)(6)</p> <p>10 deposition of Simpson Thacher as opposed</p> <p>11 to an individual deposition of the</p> <p>12 witnesses.</p> <p>13 * * *</p> <p>14 A L V I N B R O W N, called as a witness,</p> <p>15 having been duly sworn by a Notary</p> <p>16 Public, was examined and testified as</p> <p>17 follows:</p> <p>18 EXAMINATION BY</p> <p>19 MR. THOMAS:</p> <p>20 Q. Mr. Brown, good afternoon.</p> <p>21 A. Good afternoon.</p> <p>22 Q. Would you please state your full</p> <p>23 name?</p> <p>24 A. Alvin Howard Brown.</p> <p>25 Q. And have you been deposed before?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. I have.</p> <p>3 Q. So you understand how this process</p> <p>4 works. If at any point you're not sure what</p> <p>5 question I'm asking, please ask me to</p> <p>6 rephrase. I'll be happy to try.</p> <p>7 A. Yes.</p> <p>8 Q. Do you understand you've been</p> <p>9 designated by Simpson to be the 30(b)(6)</p> <p>10 witness on a couple of topics here today?</p> <p>11 A. Yes.</p> <p>12 Q. And those topics include generally</p> <p>13 the compensation and cure liabilities assumed</p> <p>14 by Barclays and the employment offered to</p> <p>15 Lehman executives by Barclays.</p> <p>16 A. I just didn't understand -- after</p> <p>17 "compensation" what was the next word that</p> <p>18 you --</p> <p>19 Q. Cure payments, liabilities.</p> <p>20 A. Okay.</p> <p>21 Q. We'll work through it and see how</p> <p>22 we do.</p> <p>23 A. Fine.</p> <p>24 Q. How long have you been with</p> <p>25 Simpson?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 8	Page 9
<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Since May of 1983. So about 26</p> <p>3 years.</p> <p>4 Q. And what is your area of practice?</p> <p>5 A. I'm the head of the Executive</p> <p>6 Compensation and Employee Benefits Group at</p> <p>7 the firm.</p> <p>8 Q. And when was the first time you</p> <p>9 became involved in the Lehman/Barclays</p> <p>10 transaction?</p> <p>11 A. September of 2008. It was after</p> <p>12 Labor Day. I don't -- I don't remember the</p> <p>13 exact date.</p> <p>14 Q. And had you worked previously for</p> <p>15 or with Lehman Brothers?</p> <p>16 A. During the course of my time at</p> <p>17 Simpson?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. Had they been a regular client of</p> <p>21 the firm for many years?</p> <p>22 A. Yes.</p> <p>23 Q. And can you describe what work you</p> <p>24 have done for Simpson over the years? You</p> <p>25 personally?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. For Simpson?</p> <p>3 Q. Or excuse me. For Lehman. What</p> <p>4 work have you done for -- on behalf of Lehman</p> <p>5 while at Simpson?</p> <p>6 MR. AMER: Do you mean in very</p> <p>7 general terms?</p> <p>8 MR. THOMAS: Yes.</p> <p>9 A. Actually, my involvement was in my</p> <p>10 early years at Simpson generally and I</p> <p>11 addressed some questions related to ERISA or</p> <p>12 compensation. But hadn't worked with them for</p> <p>13 years until this.</p> <p>14 Q. And when this came up, the</p> <p>15 transaction with Barclays, why were you</p> <p>16 brought into the matter?</p> <p>17 A. Because my partner in the group</p> <p>18 had a personal issue conflict that he couldn't</p> <p>19 be available for the weekend that was going to</p> <p>20 be relevant and I was asked to step in.</p> <p>21 Q. Do you recall the week that Lehman</p> <p>22 Brothers Holding filed bankruptcy being</p> <p>23 roughly September 15th? Is that consistent</p> <p>24 with your recollection?</p> <p>25 A. Yeah. That's consistent.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 A. BROWN - HIGHLY CONFIDENTIAL
2 **Q. And do you recall whether you were**
3 **over -- physically went over to Lehman**
4 **Brothers' building on that Monday after the**
5 **filing?**

6 A. Yes.

7 **Q. And you spent a good part of the**
8 **day there?**

9 A. Yes.

10 **Q. And what were you doing there?**

11 A. Negotiating the benefit provisions
12 of an acquisition agreement.

13 **Q. And can you elaborate a little**
14 **more on the benefit provisions, what precisely**
15 **you mean?**

16 A. There were provisions in the
17 agreement that related to the treatment or
18 handling of the employees of the Lehman
19 entities. And I was addressing those issues
20 along with two partners from Weil Gotshal.

21 **Q. And who were they?**

22 A. Andy Gaines and Amy Rubin.

23 **Q. And did you continue to work on**
24 **those issues through the week or just for a**
25 **couple of days, or do you recall?**

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1 A. BROWN - HIGHLY CONFIDENTIAL
2 A. My recollection, yes, but
3 intermittently.

4 **Q. So through the time of closing?**

5 A. Really, after the agreement was
6 signed my involvement was pretty attenuated.

7 **Q. And by agreement, are you**
8 **referring to the original executed APA?**

9 A. Correct.

10 **Q. Let me go ahead and show you this.**
11 **I might refer to it later. It was previously**
12 **marked as Exhibit 1. Take a moment and review**
13 **and just confirm whether that's the agreement**
14 **that you were involved in negotiating and**
15 **drafting.**

16 A. I mean the title of it is the same
17 title as the agreement. You know, without --
18 I'm assuming that if it is, it is the one that
19 I worked on.

20 **Q. If you would --**

21 A. It's certainly the same title.

22 **Q. Sure. And if you'd flip to**
23 **Section 9.**

24 A. (Witness complies.)

25 **Q. Are those sections or issues some**
TSG Reporting - Worldwide 877-702-9580

1 A. BROWN - HIGHLY CONFIDENTIAL
2 of the sections and issues that you worked on?

3 A. Yes.

4 **Q. Let's put that aside for a second.**
5 **And let me show you a document -- we'll refer**
6 **back to that in a minute. But let me show you**
7 **a document marked Exhibit 489 which is the**
8 **LBHI board minutes.**

9 (Document review.)

10 **Q. Let me start by asking if you**
11 **recognize the document itself.**

12 A. Only because it's identified. But
13 I'm not sure.

14 **Q. Have you had occasion to read this**
15 **document before?**

16 A. I have read it in connection with
17 preparing for this deposition.

18 **Q. Okay.**

19 A. I'm not sure I saw it before that.
20 But I...

21 **Q. Do you recall attending this board**
22 **meeting described here?**

23 A. Yes.

24 **Q. And you're listed as a present on**
25 **the first page.**

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1 A. BROWN - HIGHLY CONFIDENTIAL
2 Do you see that?

3 A. Yes.

4 **Q. If you would turn, please to page**
5 **number 3 of this document.**

6 A. (Witness complies.)

7 **Q. The second paragraph reads, "Mr.**
8 **Roberts -- " do you understand that to be a**
9 **Weil Gotshal lawyer?**

10 A. I don't remember who he was with.

11 **Q. Okay.**

12 It reads, "Mr. Roberts resumed by
13 describing that it is a condition to the
14 transaction that eight specific firm employees
15 enter into employment agreements with
16 Barclays. He stated that Mr. McGee was one of
17 those employees, so interested firm employees
18 were involved in the transaction negotiations
19 on behalf of the team."

20 Do you see that?

21 A. Yes.

22 **Q. And so Simpson was aware at the**
23 **time the deal was being negotiated that**
24 **members of Lehman negotiating the deal were at**
25 **the same time negotiating employment**

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Page 18	Page 19
<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 firm's employees which they were going to be</p> <p>3 buying?</p> <p>4 A. Yes.</p> <p>5 Q. And did that make sense to you in</p> <p>6 this environment that Barclays was concerned</p> <p>7 that they were essentially buying the</p> <p>8 business, that they be able to retain the</p> <p>9 Lehman employees that made up the business?</p> <p>10 MR. HINE: Object to the form.</p> <p>11 A. Yes.</p> <p>12 Q. Let me show you a document that</p> <p>13 we'll mark as Exhibit 531.</p> <p>14 (Deposition Exhibit 531, document</p> <p>15 bearing production number STB 09661,</p> <p>16 marked for identification as of this</p> <p>17 date.)</p> <p>18 BY MR. THOMAS:</p> <p>19 Q. And let me know when you've had a</p> <p>20 chance to review it.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. Do you recognize this as an e-mail</p> <p>24 from yourself to a couple people at Lehman and</p> <p>25 other Simpson attorneys dated September 17th,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 2008?</p> <p>3 A. Yes.</p> <p>4 Q. And in here you write in part in</p> <p>5 the second paragraph, "I wanted to be sure</p> <p>6 that you knew that I would be happy to speak</p> <p>7 to you or any of the Big 8 or other senior</p> <p>8 executives as they worked through the</p> <p>9 employment letters or other arrangements with</p> <p>10 Barclays."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Do you recall if you ever ended up</p> <p>14 doing further work in terms of the substance</p> <p>15 of the employment letters?</p> <p>16 A. I -- yes.</p> <p>17 Q. And did you?</p> <p>18 A. No.</p> <p>19 Q. Turning back to the original APA</p> <p>20 and that Section 9. Section 9.1. Is it fair</p> <p>21 to say that Section 9.1 addresses two types of</p> <p>22 employment -- employee benefits; one involving</p> <p>23 severance payments and one involving bonus</p> <p>24 payments?</p> <p>25 A. Could you repeat the question?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 20	Page 21
<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Sure. Within Section 9.1 which is</p> <p>3 Employment Benefits there's both an assumed</p> <p>4 liability by the purchaser in terms of</p> <p>5 severance and bonus payments, correct?</p> <p>6 MR. HINE: Object to the form.</p> <p>7 MR. AMER: You can answer.</p> <p>8 A. Yes.</p> <p>9 Q. Do you know if there was ever any</p> <p>10 effort to calculate that liability?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you have any recollection of a</p> <p>13 \$2 billion number?</p> <p>14 A. Yes.</p> <p>15 Q. Is it your recollection that \$2</p> <p>16 billion number was someone's estimate of</p> <p>17 potential liability under Section 9.1?</p> <p>18 MR. HINE: Object to the form.</p> <p>19 A. Yes. But not with respect to the</p> <p>20 section that you just were referencing. The</p> <p>21 \$2 billion number really related to subsection</p> <p>22 C.</p> <p>23 Q. Do you recall ever seeing it on</p> <p>24 a -- where do you recall seeing the \$2 billion</p> <p>25 number?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. It was on a schedule.</p> <p>3 Q. And did the schedule have a</p> <p>4 separate line item for severance?</p> <p>5 A. I don't recall.</p> <p>6 Q. And do you know who calculated the</p> <p>7 \$2 billion figure?</p> <p>8 A. I do not.</p> <p>9 Q. Were you involved in that process</p> <p>10 in any way?</p> <p>11 A. In calculating the number?</p> <p>12 Q. Yes.</p> <p>13 A. No.</p> <p>14 Q. Do you have any understanding what</p> <p>15 it entailed specifically?</p> <p>16 A. Yes.</p> <p>17 Q. And -- let me go ahead and show</p> <p>18 you a document we'll mark as 532.</p> <p>19 (Deposition Exhibit 532, document</p> <p>20 bearing production number LBHI 013444</p> <p>21 with attached spreadsheet, marked for</p> <p>22 identification as of this date.)</p> <p>23 A. Okay.</p> <p>24 Q. Have you ever seen this document</p> <p>25 before?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 22	Page 23
<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Let me ask you to take a moment to</p> <p>4 review the attachment to the e-mail.</p> <p>5 A. The attachment to --</p> <p>6 Q. The cover is an e-mail --</p> <p>7 A. Oh, I see. Okay. Sorry.</p> <p>8 Q. The cover is an e-mail from Kelly</p> <p>9 Martin to Richard Krasnow, an attorney at Weil</p> <p>10 Gotshal, dated September 18th, 2008.</p> <p>11 A. Right.</p> <p>12 Q. The spreadsheet attachment, do you</p> <p>13 recall whether as part of your work with</p> <p>14 respect to the Barclays sales transaction, you</p> <p>15 ever reviewed sheets like this?</p> <p>16 A. Yes.</p> <p>17 Q. And did you?</p> <p>18 A. Yes. But not this one.</p> <p>19 Q. How do you -- how are you certain</p> <p>20 a year later that it's not this one?</p> <p>21 A. I've just never seen it before.</p> <p>22 Q. Did you see a lot of spreadsheets?</p> <p>23 A. No. Well, in this transaction?</p> <p>24 No.</p> <p>25 Q. Have you seen more than one?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 A. Not that I recall.</p> <p>3 Q. When you say spreadsheet, are you</p> <p>4 referring to just a one-page schedule?</p> <p>5 A. Correct.</p> <p>6 Q. You never saw any of the backup as</p> <p>7 to how that schedule was built up?</p> <p>8 A. (Witness shakes head.)</p> <p>9 MR. AMER: You have to answer.</p> <p>10 THE WITNESS: Oh.</p> <p>11 A. No.</p> <p>12 Q. If you would look at the last page</p> <p>13 of this document under the Liabilities column,</p> <p>14 do you see the fourth section there, Payables?</p> <p>15 A. Yes.</p> <p>16 Q. And do you see Compensation</p> <p>17 Payable?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see that there was a</p> <p>20 transaction adjustment to that payable?</p> <p>21 A. Yes.</p> <p>22 Q. Were you aware at the time that</p> <p>23 there was a transaction adjustment to the</p> <p>24 estimate for compensation payables?</p> <p>25 A. Not that I recall.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 24	Page 25
<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 Q. You don't recall having</p> <p>3 discussions with Weil Gotshal lawyers about</p> <p>4 that issue?</p> <p>5 A. No.</p> <p>6 Q. Do you have an understanding of</p> <p>7 why there would be a transaction adjustment?</p> <p>8 MR. GATTO: Object to the form of</p> <p>9 the question.</p> <p>10 Q. To the compensation payable.</p> <p>11 MR. AMER: Same objection. Since</p> <p>12 he doesn't recall there being an</p> <p>13 adjustment.</p> <p>14 A. No. I mean...</p> <p>15 Q. Do you have any knowledge as to</p> <p>16 whether this line item, Compensation Payable,</p> <p>17 includes severance?</p> <p>18 A. No.</p> <p>19 Q. Do you know whether Lehman pays a</p> <p>20 larger or smaller percentage of its yearly</p> <p>21 bonuses as cash than Barclays does?</p> <p>22 MR. AMER: Object to the form of</p> <p>23 the question.</p> <p>24 A. I don't recall.</p> <p>25 Q. Do you know whether the \$2 billion</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 A. BROWN - HIGHLY CONFIDENTIAL</p> <p>2 figure you're referring to was adjusted in</p> <p>3 order to allow for the fact that Barclays pays</p> <p>4 a higher percentage of cash compensation?</p> <p>5 MR. HINE: Object to the form.</p> <p>6 A. No.</p> <p>7 Q. Do you understand whether there</p> <p>8 was any adjustment to the figure in order to</p> <p>9 cover the entire Lehman fiscal year for the</p> <p>10 compensation amounts due?</p> <p>11 MR. HINE: Object to the form.</p> <p>12 A. No.</p> <p>13 Q. Do you have any understanding of</p> <p>14 where that \$2 billion figure came from or how</p> <p>15 it was calculated?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me.</p> <p>18 A. My understanding was that that was</p> <p>19 the number for the accrued bonuses for the</p> <p>20 Lehman employees for that year. It had been</p> <p>21 agreed to and was put on the schedule.</p> <p>22 Q. And where did that understanding</p> <p>23 come from?</p> <p>24 A. I don't -- it was from one of the</p> <p>25 participants or part of the team that was</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 A. BROWN - HIGHLY CONFIDENTIAL
2 involved in negotiating but I don't recall
3 specifically who it was.

4 **Q. Do you recall which party it was**
5 **from?**

6 A. No.

7 **Q. Is this something that you**
8 **actually recall from a year and a half ago or**
9 **is it something that you've learned in**
10 **preparation for this deposition?**

11 MR. HINE: Well, hold on. Before
12 you answer that --

13 MR. THOMAS: That's a timing
14 question. That can't be privileged.

15 MR. HINE: I'm cautioning him not
16 to reveal privileged information he
17 might have learned after September 30th.
18 We have a waiver here. So if your
19 answer entails something that you
20 learned after September 30th you're not
21 allowed to waive the privilege.

22 A. I'm not -- could you repeat the
23 question because I'm not sure --

24 **Q. Your understanding about this \$2**
25 **billion figure, is this an actual recollection**

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1 A. BROWN - HIGHLY CONFIDENTIAL
2 of yours from a year and a half ago or is it
3 something you've come to understand more
4 recently in connection with this deposition?

5 MR. HINE: Same warning.

6 A. When you say my understanding of
7 this, I mean, what I told you was my
8 understanding and I really hadn't had
9 discussions that changed that since then.

10 **Q. So this is based on your**
11 **recollection from a year ago.**

12 A. My recollection.

13 **Q. Now, what did you do to prepare**
14 **for today's deposition?**

15 A. I met with my counsel.

16 **Q. Anything else?**

17 A. Actually, no.

18 **Q. If -- so turning back to the --**
19 **Section 9.1 of the original APA did you draft**
20 **this language in any part of the 9.1?**

21 A. Yes.

22 **Q. Which portions did you draft?**

23 A. That I can't recall.

24 **Q. Were you the original drafter?**

25 A. No.

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1 A. BROWN - HIGHLY CONFIDENTIAL

2 **Q. Do you know who was?**

3 A. Somebody at Cleary. I dealt with
4 Arthur Cohen who's a partner at Cleary but I
5 don't -- the draft came originally to me and
6 my understanding was it had been drafted by
7 Cleary and then I marked it up.

8 **Q. Do you recall any changes you made**
9 **to (b) or (c)? Section (b) or (c) of 9.1.**

10 A. I don't recall the specifics.

11 **Q. Okay. Is it your under -- let's**
12 **say that after Barclays -- the Barclay**
13 **transaction was consummated 90 percent of the**
14 **employees were severed. Barclays would have**
15 **to pay severance for those employees, correct,**
16 **pursuant to 9.1(b)?**

17 MR. AMER: Objection to the form
18 of the question.

19 **Q. 9(c). Strike that.**

20 **If Barclays -- under 9.1 Barclays**
21 **would have to pay severance payments to**
22 **employees severed prior to the end of the**
23 **year; is that correct?**

24 A. Correct.

25 **Q. And if there were a lot of**

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1 A. BROWN - HIGHLY CONFIDENTIAL
2 severances -- strike that.

3 And you know if that would involve
4 paying those employees all of their accrued
5 2008 bonus money.

6 A. Yes.

7 **Q. So there's potentially a lot of**
8 **assumed liability by taking on that severance**
9 **obligation; is that correct?**

10 MR. HINE: Objection.

11 A. Correct. Yes.

12 **Q. Is it your belief that if Barclays**
13 **had terminated 90 percent of the employees,**
14 **that the remaining 10 percent of the employees**
15 **would have to get paid \$2 billion?**

16 MR. ROTHMAN: Objection to the
17 form.

18 MR. HINE: Same objection.

19 MR. AMER: You can answer.

20 A. No. That's not my understanding.
21 Or my belief.

22 **Q. In that event if that -- in that**
23 **scenario, would some of the \$2 billion be sent**
24 **to pay bonuses to the retained employees and**
25 **severance to the severed employees?**

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Exhibit 39

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555(JMP)
Adv. Case No. 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:
LEHMAN BROTHERS HOLDINGS INC., et al.,
Debtors.
- - - - -x
SECURITIES INVESTOR PROTECTION CORPORATION,
Plaintiff,
-against-
LEHMAN BROTHERS INC.,
Debtor.
- - - - -x
U.S. Bankruptcy Court
One Bowling Green
New York, New York
April 26, 2010

B E F O R E :
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 30</p> <p style="text-align: center;">- 30 -</p> <p>1 This is --</p> <p>2 (Begin playback of clip)</p> <p>3 "Q. One of Deloitte & Touche's tasks is to create a balance</p> <p>4 sheet for LBI as of the start of the SIPA liquidation, is that</p> <p>5 correct?</p> <p>6 "A. We asked them to do that at some point.</p> <p>7 "Q. And they have not yet completed that, correct?</p> <p>8 "A. That's correct."</p> <p>9 (End playback of clip)</p> <p>10 MR. HUME: And now, Your Honor, the 30(b)(6)</p> <p>11 representative from Deloitte who was asked about their work on</p> <p>12 that opening balance sheet:</p> <p>13 (Begin playback of clip)</p> <p>14 "Q. Did Deloitte at any time attempt to value any of the</p> <p>15 assets listed under the purchased assets?</p> <p>16 "A. The only time we attempted to value -- or, sorry, we did</p> <p>17 not attempt to value anything related to this listing.</p> <p>18 "Q. Can I ask -- well, it seems like you were clarifying your</p> <p>19 language. Was there something you were going to say before</p> <p>20 that?</p> <p>21 "A. We had been in process of creating a draft balance sheet,</p> <p>22 but Deloitte hasn't been doing the valuations.</p> <p>23 "Q. Who was, then, doing the valuations for the draft balance</p> <p>24 sheet?</p> <p>25 "A. The valuations have been coming from third-party sources</p>	<p style="text-align: right;">Page 32</p> <p style="text-align: center;">- 32 -</p> <p>1 I think some of them are very difficult to value. And if</p> <p>2 they're accepting Barclays' valuations, that undercuts the</p> <p>3 arguments of the other movants.</p> <p>4 We're entitled to know what they thought that balance</p> <p>5 sheet looked like, what they thought we were getting from that</p> <p>6 balance sheet at the time. It's directly relevant to our</p> <p>7 claims. It's not work product. It's work they would be doing</p> <p>8 if -- wholly independent of this litigation and which, I assume</p> <p>9 in good faith, no one was thinking about at that time, since,</p> <p>10 if they were, then it wouldn't be new evidence; they would have</p> <p>11 had that evidence.</p> <p>12 Now, Your Honor asked a second question, which is why</p> <p>13 is -- why are we bringing this at this time; is it -- and how</p> <p>14 do we explain what Your Honor called the last-minute nature of</p> <p>15 it.</p> <p>16 Your Honor, we did bring a motion, as you'll recall,</p> <p>17 after the Rule 60 motions were filed, seeking a broad --</p> <p>18 arguing that there had been a broad waiver of both attorney-</p> <p>19 client privilege and attorney work product.</p> <p>20 And if I may have slide A-8.</p> <p>21 In response to that motion, the movants argued that</p> <p>22 all of their claims were objective, based on objective</p> <p>23 evidence, what was told to the Court; nothing to do with what</p> <p>24 they knew. And they made all these arguments in their</p> <p>25 opposition then, and they made it in their oppositions to our</p>
<p style="text-align: right;">Page 31</p> <p style="text-align: center;">- 31 -</p> <p>1 and Barclays.</p> <p>2 "Q. What were the third-party sources?</p> <p>3 "A. They're publicly available sources. The two that I</p> <p>4 remember are Bloomberg and IBSI.</p> <p>5 "Q. Is that work still going on?</p> <p>6 "A. Yes.</p> <p>7 "Q. When did Deloitte first work on in any way a balance sheet</p> <p>8 for LBI?</p> <p>9 "A. Started in late '08. We did not have access to the books</p> <p>10 and records until around that time to be able to get the</p> <p>11 details to start creating a balance sheet.</p> <p>12 "Q. What was the purpose of creating a balance sheet?</p> <p>13 "A. To determine what the assets and liabilities existed as of</p> <p>14 9/19/08, the date of liquidation.</p> <p>15 "Q. And Deloitte is still working on that balance sheet today?</p> <p>16 "A. Yes."</p> <p>17 (End playback of clip)</p> <p>18 MR. HUME: Your Honor, so if they're trying to put</p> <p>19 together a balance sheet for the broker-dealer as of the date</p> <p>20 of the liquidation, that is going to show the values of the</p> <p>21 assets and liabilities; it's going to show whether they're</p> <p>22 doing it themselves or relying on other people. And I did ask</p> <p>23 the trustee's 30(b)(6) (sic) in deposition are these assets</p> <p>24 difficult to value, since it's taken a year, or more now, to</p> <p>25 actually produce this opening balance sheet. And he said yes,</p>	<p style="text-align: right;">Page 33</p> <p style="text-align: center;">- 33 -</p> <p>1 second motion to compel. And Your Honor accepted those</p> <p>2 arguments on page -- I think it's 116 to -17 of the December</p> <p>3 16th transcript. When you read your opinion denying our</p> <p>4 motion, you said "I view these claims as objective," as based</p> <p>5 upon what was told to the Court, nothing to do with what the</p> <p>6 movants knew.</p> <p>7 And, Your Honor, we respectfully disagreed with that,</p> <p>8 but we, obviously, respected the Court's decision. And we made</p> <p>9 our arguments in our brief to explain why legally there is no</p> <p>10 way they can bring the claims they're bringing without showing</p> <p>11 their own subjective lack of understanding of the terms of this</p> <p>12 deal.</p> <p>13 Judge Peck, there's no case that has ever allowed a</p> <p>14 Rule 60(b) modification of a sale order that was affirmed on</p> <p>15 appeal. There are virtually none that have had any 60(b)</p> <p>16 modification of the sale order; none after an appeal. They</p> <p>17 argue new evidence under 60(b)(2), a required element of which</p> <p>18 is that they subjectively did not understand the terms of the</p> <p>19 sale.</p> <p>20 Because there's a -- so that's one reason they must</p> <p>21 show they didn't understand. There's also a mandate from the</p> <p>22 district court, which is a jurisdictional mandate. The sale</p> <p>23 order had been affirmed. There's arguably no exception to that</p> <p>24 mandate, but any such exception must again rely on their</p> <p>25 ability to show they didn't understand the sale they were</p>

<p style="text-align: right;">Page 158</p> <p style="text-align: center;">- 158 -</p> <p>1 to-market basis, is that right?</p> <p>2 A. Yes, we did.</p> <p>3 Q. And does the book value of securities on a mark-to-market</p> <p>4 basis contemplate the sale of securities in bulk to your</p> <p>5 understanding?</p> <p>6 A. Not in distress.</p> <p>7 Q. And would book value of a financial institution reflect</p> <p>8 moving the entire book the next morning?</p> <p>9 A. No, it would not.</p> <p>10 Q. And in the course of your discussions with Barclays, was</p> <p>11 there any suggestion that it was their intention to move the</p> <p>12 purchased assets the next day in bulk?</p> <p>13 A. Could you repeat that question? I'm sorry.</p> <p>14 Q. Let me shoot it and try something simpler. Did Barclays</p> <p>15 say anything along the lines of they were going to resell the</p> <p>16 assets in bulk the day after they purchased them?</p> <p>17 A. No.</p> <p>18 Q. Had you, on the 16th, spoken to anyone who had told you</p> <p>19 that Lehman had been unable to mark its books on the 16th?</p> <p>20 A. No, I had not spoken to anyone.</p> <p>21 Q. Had you at the time?</p> <p>22 A. At the time, I had not spoken to anyone.</p> <p>23 Q. And at the time, had you spoken to anyone who told you</p> <p>24 Lehman was unable to mark its books as of the 15th of</p> <p>25 September?</p>	<p style="text-align: right;">Page 160</p> <p style="text-align: center;">- 160 -</p> <p>1 A. Yes, he would.</p> <p>2 Q. When you learned the terms of the transaction, sir -- when</p> <p>3 the terms of the transaction were reached in the early morning</p> <p>4 of the 16th, what, if any, provisions in the structured</p> <p>5 agreement --</p> <p>6 MR. GAFFEY: Withdrawn.</p> <p>7 Q. When an agreement was reach early on the morning of the</p> <p>8 16th, sir, were there any agreements with respect to Barclays'</p> <p>9 assuming liabilities for compensation or for trade payable</p> <p>10 cure?</p> <p>11 A. Yes, there were.</p> <p>12 Q. Could you describe them to the Court, please?</p> <p>13 A. Barclays would need to -- well, start with the cure.</p> <p>14 Barclays would need to get a list of the contracts that</p> <p>15 heretofore Lehman had had responsibility for in terms of those</p> <p>16 that affected the running of the businesses that they were</p> <p>17 purchasing. And they agreed, in principle, to honor those --</p> <p>18 those contracts after the process of being able -- given we</p> <p>19 were unable during the course of that week -- to actually start</p> <p>20 any integration process of any consequence. After they were</p> <p>21 given the information, they were given a period of time, I</p> <p>22 believe sixty days, to be able to go through the process and</p> <p>23 understand those contracts and make the determination at that</p> <p>24 point in time whether or not those were necessary for running</p> <p>25 the business and franchise going forward.</p>
<p style="text-align: right;">Page 159</p> <p style="text-align: center;">- 159 -</p> <p>1 A. No, I don't have that recollection.</p> <p>2 Q. So as you sit here today, sir, do you know if Lehman's</p> <p>3 books had been marked as of the 15th and 16th of September, do</p> <p>4 you have any knowledge of that?</p> <p>5 A. As I sit here today, I don't have knowledge.</p> <p>6 Q. Was Paolo Tonucci involved in the negotiations, sir?</p> <p>7 A. Paolo Tonucci was the treasurer of Lehman. He was</p> <p>8 involved as the week went on, not early on in the negotiations,</p> <p>9 to the best of my knowledge.</p> <p>10 Q. Now, I don't want to miss each other, here. With regard</p> <p>11 to the negotiations, I take it there's ac -- let's be clear on</p> <p>12 what terms we're using, okay? With regard to the negotiations,</p> <p>13 I'm not asking if they were involved in the haggling, in the</p> <p>14 horse-trading at the table. Do you know if Mr. Tonucci had a</p> <p>15 role early in the week around those negotiations, you know, in</p> <p>16 any other role?</p> <p>17 A. I would have thought he would, yes.</p> <p>18 Q. Why would you think that?</p> <p>19 A. Given his role as a treasurer.</p> <p>20 Q. Okay, and let me ask you the same question with respect to</p> <p>21 Mr. Kelly. Would he have had involvement around the</p> <p>22 negotiations?</p> <p>23 A. Yes, he would have.</p> <p>24 Q. And with respect to Mr. Lowitt in that early part of the</p> <p>25 week, would he have had involvement around the negotiations?</p>	<p style="text-align: right;">Page 161</p> <p style="text-align: center;">- 161 -</p> <p>1 Q. The other part of that question had to do with</p> <p>2 compensation, sir.</p> <p>3 A. Right. Barclays also assumed a two billion compensation</p> <p>4 liability with respect to the combination of the employees'</p> <p>5 bonus process and the severance process with respect to -- they</p> <p>6 agreed to hire all of the Lehman North American employees, and</p> <p>7 then there was a period of time, I believe ninety days, that</p> <p>8 they had to make ultimate determination, in terms of whether or</p> <p>9 not those would become permanent employees of the -- of the bar</p> <p>10 cap going forward.</p> <p>11 Q. And at the time, around the 15th or the 16th -- I'm still</p> <p>12 in that early part of the week -- was any number put up as an</p> <p>13 estimate of the amount Barclays would pay in trade payables?</p> <p>14 A. Trade payables, I believe the number at that point in time</p> <p>15 was 2.25 billion.</p> <p>16 Q. And who calculated that number?</p> <p>17 A. They're not calculations. They're an attempt to extract</p> <p>18 from the Lehman systems the list of those contracts and</p> <p>19 obligations. That would have been Martin Kelly.</p> <p>20 Q. And did there come a time during the course of the week</p> <p>21 where that number changed from 2.25?</p> <p>22 A. As information became clearer, that number changed from</p> <p>23 2.25; I believe by Friday, it was 1.5 billion.</p> <p>24 Q. And in your understanding at the time, sir, was that an</p> <p>25 estimate of an amount that Barclays actually would pay</p>

<p style="text-align: right;">Page 162</p> <p style="text-align: center;">- 162 -</p> <p>1 A. That was an estimate of an amount that Barclays had the 2 potential to pay. 3 Q. And was any estimate done -- did you have any discussions 4 with Barclays -- you or anyone on the negotiating team have 5 discussions with Barclays about whether Barclays intended to 6 pay amounts in that range? 7 A. No, I did not. 8 Q. Was it an issue that came up in the negotiations between 9 the Lehmanites and the Barclays side of the table at all, as 10 far as you know? 11 A. Not that I was involved in. 12 Q. And who calculated the two billion dollar numbers -- the 13 two billion dollar figure for compensation? 14 A. The compensation process was a process that I would 15 describe where Lehman provided Barclays -- Lehman -- I believe 16 it started in the work stream with the HR professionals. 17 Lehman provided the data that existed on the Lehman accrual at 18 that point in time, and then provided that data to -- an 19 historical pay data -- historical pay data, as well, to 20 Barclays and obviously cooperated in terms of all the flow of 21 information that Barclays needed. It's certainly my 22 understanding that Barclays would have been the ultimate 23 determiner given that it was such an important part of what 24 they were buying, which is the services of the good employees 25 of Lehman, that they would have reflected on that compensation</p>	<p style="text-align: right;">Page 164</p> <p style="text-align: center;">- 164 -</p> <p>1 liabilities meant to be a process to determine what Barclays 2 was likely to pay once it bought the business? 3 A. The process was to collect the data and make sure we 4 understood the actual obligations needed to pay. There was no 5 process around the likely outcome of that figure. 6 Q. And with respect to the compensation number, was that an 7 agreed number, two billion dollars? 8 A. That was a number that was ultimately agreed, yes. 9 Q. Okay, if you would turn, sir, in your book to tab M2, or 10 2, Movants' Exhibit 2? Are you with me on the document, sir? 11 Movants' Exhibit 2? 12 A. Yes, I am. 13 Q. Have you seen the document before? 14 A. Yes, I have. 15 Q. What were the circumstances under which you first saw the 16 document? 17 A. This was a document that I described a little earlier that 18 became a guidance document for all the participants, including 19 advisors, with respect to the deal and its structuring and 20 coming together. 21 Q. And when you first saw the document, were you with other 22 people? 23 A. I don't have a specific recollection of that. 24 Q. You see that the document's initialed in the upper right- 25 hand corner?</p>
<p style="text-align: right;">Page 163</p> <p style="text-align: center;">- 163 -</p> <p>1 process. So they would have been the ultimate determiners, in 2 my opinion, of the compensation figure. But given a lot of 3 cooperation and a lot of information from Lehman. 4 Q. And when you say ultimate determiner of the compensation 5 figure, are you referring to what compensation figure would be 6 used in connection with making the agreement? 7 A. Correct. 8 Q. To your knowledge, did Mr. Kelly participate in the 9 estimation of -- did Mr. Kelly review Lehman's accruals for 10 trade payables as part of the process of estimating the cure 11 liability? 12 A. Yes. 13 Q. At the time, sir, did you have any knowledge whether or 14 not Mr. Kelly made transaction adjustments that wrote those 15 numbers up? 16 A. No, I had no knowledge of that. 17 Q. Did you ever have a discussion with him along those lines? 18 A. Around writing up the -- no, I have not -- did not have a 19 conversation with him. 20 Q. Would it have surprised you if he had? 21 A. Absolutely. 22 Q. Why would it have surprised you? 23 A. Because he's someone I worked with for many years and a 24 man of great integrity. 25 Q. Was the process of attempting to estimate trade</p>	<p style="text-align: right;">Page 165</p> <p style="text-align: center;">- 165 -</p> <p>1 A. Yes, I do. 2 Q. Do you recognize the initials? 3 A. Steve Berkenfeld. 4 Q. Okay, and above that is the date, September 16th, '08 and 5 the word "final". Were you there when Mr. Berkenfeld put his 6 initials on the document? 7 A. I don't recall -- no, I don't think so. 8 Q. Okay, does this document bear any relation to the sale 9 transaction as you understand it, sir? 10 A. It has a strong resemblance, yes. 11 Q. Could you describe what you mean by that? 12 A. This was, again, the guidance document used for the first 13 hearing in this courtroom. 14 Q. And when you say the guidance document used for the first 15 hearing in the courtroom, is it fair to say these are the 16 numbers upon which the deal was based on the 16th? 17 A. Yes. 18 Q. And on the asset side of this financial schedule, sir, who 19 generated those -- who or what process generated those numbers? 20 A. That process that I described before of the different risk 21 partners from both organizations. 22 Q. Okay, and the asset side numbers that total -- well, the 23 asset side numbers, are they the agreed numbers or are they 24 numbers that are taken directly from Lehman's books? 25 A. They are the agreed numbers.</p>

<p style="text-align: right;">Page 166</p> <p style="text-align: center;">- 166 -</p> <p>1 Q. And the asset side numbers on this schedule, sir, did they</p> <p>2 have that same delta between the agreed number and the Lehman</p> <p>3 books that we talked about before?</p> <p>4 A. That's what I would understand.</p> <p>5 Q. And would that be about that five billion dollar element</p> <p>6 we talked about?</p> <p>7 A. I don't have specific knowledge of the exact number, but</p> <p>8 yes.</p> <p>9 Q. It would be in the range of five billion?</p> <p>10 A. Right.</p> <p>11 Q. Now, do you know, sir, if Lehman's books were ever marked</p> <p>12 to reflect the agreed valuation by the usual mark-to-market</p> <p>13 methods?</p> <p>14 A. I don't know that.</p> <p>15 Q. And who would you ask if you wanted to know the answer to</p> <p>16 that?</p> <p>17 A. Martin Kelly.</p> <p>18 Q. Would you ask Mr. Lowitt, as well?</p> <p>19 A. Yes, he should've known.</p> <p>20 Q. Did the agreed valuation that's reflected in Exhibit 4</p> <p>21 include any kind of haircut to reflect market volatility?</p> <p>22 A. I'm sorry, is this Exhibit 4?</p> <p>23 Q. Yes.</p> <p>24 A. Okay.</p> <p>25 UNIDENTIFIED SPEAKER: 2.</p>	<p style="text-align: right;">Page 168</p> <p style="text-align: center;">- 168 -</p> <p>1 when this -- or less -- when that moment was this -- this</p> <p>2 document was created. That reflected the ability to find a</p> <p>3 price to transact.</p> <p>4 Q. And the price to transact was not Lehman's book value as</p> <p>5 of the 16th of September. Is that right?</p> <p>6 A. To the best of my understanding, yes.</p> <p>7 Q. Now, when Lehman did make mark to mark judgments in its</p> <p>8 books, did it take illiquidity into account?</p> <p>9 MR. GAFFEY: Let me withdraw that.</p> <p>10 Q. When Lehman recorded marks on its books, was illiquidity</p> <p>11 taken into account?</p> <p>12 A. Yes, it was.</p> <p>13 Q. Now, on the liability side of this schedule, sir, you'll</p> <p>14 see at the lower right-hand corner, items for cure, payment and</p> <p>15 comp. Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And the comp number is put at 2.25. We understand this</p> <p>18 number to be billions, right, sir?</p> <p>19 A. These are billions. You said comp or cure?</p> <p>20 Q. The cure payment is put at 2.25 billion?</p> <p>21 A. Yes, it is.</p> <p>22 Q. And comp is put at 2.0 billion. Is that right?</p> <p>23 A. Yes. Yes, I see that.</p> <p>24 Q. And is the 2.25 shown on that schedule the same 2.25 you</p> <p>25 referred to a few moments ago?</p>
<p style="text-align: right;">Page 167</p> <p style="text-align: center;">- 167 -</p> <p>1 Q. I beg your pardon, 2.</p> <p>2 A. Could you repeat the question? I apologize.</p> <p>3 Q. Does the --</p> <p>4 A. Yes.</p> <p>5 Q. -- calculation asset side here reflect any haircut to</p> <p>6 reflect market volatility?</p> <p>7 A. It was the most unusual week in my twenty-five years of</p> <p>8 market experience, so clearly they had to reflect -- the</p> <p>9 valuation in that process had to reflect that uncertainty of</p> <p>10 times.</p> <p>11 Q. Well, when -- would that have been consistent with your</p> <p>12 understanding of the transaction, if the valuation that was</p> <p>13 agreed included a haircut to reflect market volatility?</p> <p>14 A. The transaction was an agreement for Barclays to purchase</p> <p>15 the assets. That negotiation would have included in a time and</p> <p>16 place where literally five million dollar trades in fixed</p> <p>17 income were unusual would have included all sorts of different</p> <p>18 assumptions in terms of the process.</p> <p>19 Q. Well, if there had been negotiations of a haircut, an</p> <p>20 agreement to apply a haircut to reflect future market</p> <p>21 volatility, would that have been consistent with your</p> <p>22 understanding of the transaction?</p> <p>23 A. No, there weren't negotiations to agree to a haircut.</p> <p>24 There were negotiations in the best sense that were possible in</p> <p>25 a forty-eight hour period, roughly speaking, at that moment</p>	<p style="text-align: right;">Page 169</p> <p style="text-align: center;">- 169 -</p> <p>1 A. Yes, it is.</p> <p>2 Q. And the two billion for comp is the same two billion you</p> <p>3 testified about a few moments ago, correct?</p> <p>4 A. Yes. Yes, it is.</p> <p>5 Q. Now, does this schedule reflect that those two components</p> <p>6 were part of the price in the asset purchase agreement?</p> <p>7 MR. GAFFEY: Withdrawn.</p> <p>8 Q. Does this schedule reflect that those two components were</p> <p>9 part of the price in the transaction that was agreed?</p> <p>10 A. The price in the transaction, yes.</p> <p>11 Q. Now, if the compensation accrual on that schedule, sir, of</p> <p>12 two billion dollars was not a good-faith estimate of what</p> <p>13 Barclays would actually pay, would that be consistent with the</p> <p>14 deal that you made?</p> <p>15 A. If it was not a good-faith estimate?</p> <p>16 Q. Yes. If it was not a good-faith estimate of what Barclays</p> <p>17 would actually wind up paying, would that be consistent with</p> <p>18 the deal that you made?</p> <p>19 A. No.</p> <p>20 Q. And were you taking any steps during the week, sir, to</p> <p>21 ensure the accuracy of the estimates regarding cure payments?</p> <p>22 A. Yes, I was.</p> <p>23 Q. What were you doing in that regard?</p> <p>24 A. I actually recall having a meeting with Martin and Ian to</p> <p>25 make sure that we had accurate information to deliver to</p>

<p style="text-align: right;">Page 170</p> <p style="text-align: center;">- 170 -</p> <p>1 Barclays.</p> <p>2 Q. And was one of the reasons that you wanted accurate</p> <p>3 information, is that it related to the amount of value that</p> <p>4 Lehman had to give to Barclays in the transaction?</p> <p>5 A. It was just a core part of the actual -- one of the deal</p> <p>6 imperatives, so we needed the accurate information with respect</p> <p>7 to what that number would be.</p> <p>8 Q. Well, apart from its accuracy, sir, my question is a</p> <p>9 little different. And it is whether it was important that it</p> <p>10 be accurate, because it related to the amount of value that</p> <p>11 Lehman was going to get from Barclays?</p> <p>12 A. Yes.</p> <p>13 Q. So in your mind, negotiating the transaction, coming up</p> <p>14 with an accurate estimate of the cure payments that Barclays</p> <p>15 would assume, was an important component of the deal. Was that</p> <p>16 right?</p> <p>17 A. An accurate estimate of the potential cure payments they</p> <p>18 would assume? Yes.</p> <p>19 Q. And an accurate estimate of the comp that they were going</p> <p>20 to pay?</p> <p>21 A. Yes.</p> <p>22 Q. Now, you mentioned before that the cure number dropped</p> <p>23 from 2.25 down to 1.5, and you thought that was the number at</p> <p>24 the end of the week. Do you recall that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 172</p> <p style="text-align: center;">- 172 -</p> <p>1 just a tough problem getting the actual ascertained data.</p> <p>2 Q. Now, do you agree, sir, that with regard to the</p> <p>3 transaction you negotiated, that a drop in the cure number</p> <p>4 would mean the consideration Barclays was giving would go down?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any reason you could think of, sir, that would</p> <p>7 justify increasing the amount of the estimate for cure over the</p> <p>8 amount shown on Lehman's books?</p> <p>9 A. There's no reason why.</p> <p>10 Q. Now, with reference to the process you described before,</p> <p>11 of looking at open trade payable contracts, trying to figure</p> <p>12 how many there were out there and coming up with a number, is</p> <p>13 it correct that -- at least as far as you understand, the</p> <p>14 amount that would have been accrued on Lehman's books would</p> <p>15 have reflected what it thought would be its trade payables,</p> <p>16 correct?</p> <p>17 A. Yes. Yes.</p> <p>18 Q. So would there be any good reason you can think why, to</p> <p>19 adjust with regard to this transaction, the accruals on</p> <p>20 Lehman's books for trade payables, would have to be increased</p> <p>21 to fit onto that schedule?</p> <p>22 A. I'm not sure I understand your question.</p> <p>23 Q. Well, the amount accrued on Lehman's books would show a</p> <p>24 cap, would show a ceiling of what Lehman thought it would have</p> <p>25 to pay in trade payables, yes?</p>
<p style="text-align: right;">Page 171</p> <p style="text-align: center;">- 171 -</p> <p>1 Q. And do you know why the number dropped from 2.25 to 1.5?</p> <p>2 A. It -- I don't know the specifics. I can only guess that</p> <p>3 given all of the challenges that we were having operationally,</p> <p>4 that would be one of the reasons. But no, I don't have the</p> <p>5 specifics.</p> <p>6 Q. Did there come a point during the week when Martin Kelly</p> <p>7 told you that the trade payables were moving from a higher to a</p> <p>8 lower number?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. Was that after -- do you recall at what point in the week</p> <p>13 that happened?</p> <p>14 A. If I recall, it was later in the week, as more information</p> <p>15 was available to him from his teams.</p> <p>16 Q. I know it was a pretty tumultuous week, sir, but was it</p> <p>17 closer to Thursday or Friday, or closer to Monday or Tuesday?</p> <p>18 Do you have it -- what's your best recollection of when during</p> <p>19 the week that happened?</p> <p>20 A. It was closer to Thursday-Friday.</p> <p>21 Q. And was it dropping below the 1.5?</p> <p>22 A. The figure was never an accurate number over the course of</p> <p>23 the week. I don't have specific recollections in terms of what</p> <p>24 each individual number, nor was I part of the process of</p> <p>25 collecting that from Martin. I knew we were having generally,</p>	<p style="text-align: right;">Page 173</p> <p style="text-align: center;">- 173 -</p> <p>1 A. Yes.</p> <p>2 Q. And if the amount ultimately agreed upon in this transa --</p> <p>3 ultimately shown in this transaction exceeded that, can you</p> <p>4 think of any rational reason to go over that amount accrued on</p> <p>5 Lehman's books?</p> <p>6 A. No, I cannot.</p> <p>7 Q. Because there aren't going to be any more trade payable</p> <p>8 contracts than Lehman's already got, right?</p> <p>9 A. That's correct.</p> <p>10 Q. Did you ever, in the course of that week, see any of Mr.</p> <p>11 Kelly's work product in connection with estimating the cure</p> <p>12 number?</p> <p>13 A. No, I did not.</p> <p>14 Q. Did you ever see any calculations or work product</p> <p>15 generated by anyone who worked for Mr. Kelly, with regard t</p> <p>16 that cure number?</p> <p>17 A. No, I did not.</p> <p>18 Q. Did Mr. Kelly ever talk to you about the process by which</p> <p>19 he was estimating that cure number?</p> <p>20 A. No, he did not.</p> <p>21 Q. Now, you mentioned before, sir, that Exhibit M-2, this</p> <p>22 financial schedule, bore a significant resemblance to the deal?</p> <p>23 A. Yes.</p> <p>24 Q. Do you mean a significant relation -- you don't mean it</p> <p>25 looked like the deal, do you? I mean, I just want to clear up</p>

<p style="text-align: right;">Page 198</p> <p style="text-align: center;">- 198 -</p> <p>1 target, and you give folks the task of finding additional 2 value, how do they know when to stop, sir? What's the measure 3 for when they should stop adding value to the deal? 4 A. We went through the same process over the course of the 5 week, so that the ultimate determination, find options, we 6 found the two options; 15c3 was still, in our minds, of 7 potentially questionable, given it needed regulatory authority 8 to be able to be transferred over. So really we were focusing 9 on making sure that we got appropriate value for the 10 unencumbered assets. Although, obviously, both were in the 11 transaction. 12 The process at the end was the team at Lehman at that 13 point in time, finishing the process in terms of the ultimate 14 determination of the -- you know, whether or not to include, 15 and "was there enough". There were no other assets. Lehman 16 was extremely motivated -- we were extremely motivated, given 17 what had happened in the marketplace and in the marketplace to 18 us, to move assets in this transaction, because we were in no 19 position to risk-manage assets, given all that had happened to 20 us, by market participants, and given the changes in our 21 personnel over the course of the week. 22 Q. Okay. There were some assets that was contemplated by the 23 transaction, would be left behind, correct? Under the original 24 asset purchase agreement, it wasn't Barclays taking all the 25 assets?</p>	<p style="text-align: right;">Page 200</p> <p style="text-align: center;">- 200 -</p> <p>1 been completed, correct? 2 A. Correct. 3 Q. And did you learn the amount that had been added? 4 A. I learned the amount of the unencumbered assets. 5 Q. So you learned 1.9? 6 A. Um-hum. 7 Q. Did you learn about the fact of the 15c3, if not its 8 amount? 9 A. The fact, yes. 10 Q. Okay. And did you learn that any other assets had been 11 added apart from unencumbered box and 15c3? 12 A. No. 13 Q. And did there come a point where you, sir, were 14 comfortable now that enough value had been added? 15 A. The team -- given I was part of a separate process now -- 16 the team had become comfortable, yes. 17 Q. Based on the process that you've described, sir, where 18 Barclays doesn't give a target, isn't it necessary that 19 Barclays is the arbiter of when people should stop looking for 20 more value? How does Mr. Kirk, Mr. Tonucci, Mr. Kelly and the 21 others know when to stop looking for more value? 22 A. I would again, just repeat my previous answer, which is, 23 number one, we had no other assets; number two, so we had found 24 all the options; and number two (sic), we'd gone through that 25 process of working through and valuing the assets over the</p>
<p style="text-align: right;">Page 199</p> <p style="text-align: center;">- 199 -</p> <p>1 A. I believe that it was customer -- some sort of customer 2 assets. 3 Q. Okay. And there comes a point on the Friday morning where 4 Barclays says in sum or essence, this repo collateral is 5 worrisome, we need more. Right? 6 A. That's correct. 7 Q. And if we don't get more, we're not going to close, right? 8 A. That's correct. 9 Q. And you give Mr. Kirk, who enlists Mr. Lowitt and Mr. 10 Kelly and some others, the task of going to find more for 11 Barclays, right? 12 A. That's correct. 13 Q. And they go and look for more for Barclays, yes? 14 A. Yes. 15 Q. In the meantime, you're headed down to this courthouse for 16 the sale hearing, correct? 17 A. That's right. 18 Q. And did you travel with your lawyers, or did you meet them 19 here? 20 A. I traveled with Weil. I had been at Weil's office. I 21 traveled with Weil. 22 Q. Okay. And who at Weil did you travel with? 23 A. Tom Roberts, Harvey Miller and Lori Fife. 24 Q. Okay. And at some point you learn, here in the 25 courthouse, that the project of adding additional value has</p>	<p style="text-align: right;">Page 201</p> <p style="text-align: center;">- 201 -</p> <p>1 course of the week. So there would have been a consistency in 2 terms of the approach. Clearly we were not in a great 3 negotiating position, as you described. But this is the same 4 consistent approach in terms of making sure that we went 5 through a process of trying to ascertain the value of those 6 assets that would be conveyed. 7 Q. Well, speaking of negotiating position, I know it was a 8 tough week from start to finish. But did you have less 9 leverage by the end of the week than you had at the beginning? 10 Did you have less leverage just before the sale hearing began 11 than you had overnight from Monday to Tuesday? 12 A. We had very little leverage. I wouldn't describe -- I 13 don't know how to describe it as we started with an empty tank 14 and ended with one. 15 Q. You would agree with me that overnight from Monday the 16 15th into the early morning of the 16th, there was back-and- 17 forth on price, wasn't there? 18 A. There was always back-and-forth on price. 19 Q. Okay. On the Friday morning, when additional assets were 20 being added, was there back-and-forth between Lehman and 21 Barclays as to how much more needed to be added? 22 A. To the best of my knowledge, yes. 23 Q. And was there ever a point where Barclays demanded more 24 and Lehman refused, saying no, that ought to be enough for you? 25 A. No. Not in ultimately how the deal got done.</p>

<p style="text-align: right;">Page 214</p> <p style="text-align: center;">- 214 -</p> <p>1 the opening day of 3.38 billion, the deal would not be in 2 balance. Is that correct? 3 A. The deal would not be in balance using all of the assets 4 and liabilities as we collectively divined the total value of 5 the transaction. That's correct. 6 Q. And the deal you made was one to be in balance, correct? 7 A. That's correct. 8 Q. So if the opening day balance sheet for the deal reflected 9 that Barclays had 3.38 billion in equity, that would not be 10 consistent with the deal you made, would it? 11 A. That's correct. But these numbers don't reflect specific 12 parts of that deal. 13 Q. Did Mr. Kelly ever inform you or anyone else, as far as 14 you know, that he was working on an opening day balance sheet 15 for Barclays? 16 A. He did not inform me, to the best of my knowledge. 17 Q. And just turning your attention back to Exhibit 74, sir, 18 to the balance sheet itself, do you see the item for cure 19 payments? I'm just directing your attention to that line. 20 A. In this same document? 21 Q. Yes, sir. 22 A. Yes. 23 Q. You see after that it says, "Placeholder for actual 24 accrual"? Do you have any idea what that meant? 25 A. No. I've not seen the document, so I can't --</p>	<p style="text-align: right;">Page 216</p> <p style="text-align: center;">- 216 -</p> <p>1 roughly familiar with it. There's a particular provision to 2 which I want to direct your attention. Let me know when you've 3 had a chance to look at that. 4 (Pause) 5 A. Okay. 6 Q. Directing your attention, sir, to the penultimate 7 paragraph on that page. I'll read it into the record: "The 8 excess of the fair value of net assets acquired over 9 consideration paid resulted in 2.262 billion pounds sterling of 10 gains on acquisition." 11 I'll represent to you, sir, that that translates to about 12 4.2 billion dollars on that day. Was a 4.2 billion dollar gain 13 derived from excess of the fair value of net assets acquired 14 over consideration paid on acquisition, contemplated by the 15 deal you made? 16 A. No. 17 Q. Did anybody ever suggest otherwise to you in the period 18 between September 15th, when the negotiations began, and the 19 conclusion of the sale hearing, at shortly after midnight on 20 the 20th of September? 21 A. No. 22 Q. Did anybody ever suggest otherwise to you in the period 23 between the end of the sale hearing, shortly after midnight on 24 the 20th of September and the closing on the 22nd of September? 25 A. No.</p>
<p style="text-align: right;">Page 215</p> <p style="text-align: center;">- 215 -</p> <p>1 Q. At any point during that week, had it ever come to your 2 attention that the number for cure was just a placeholder for 3 the actual accrual? 4 A. No. We were trying to determine the accurate figures, as 5 I've described before. 6 Q. And the accurate figure would be the amount that Barclays 7 was most likely going to have to undertake? 8 A. Potential to undertake. 9 Q. Okay. And the accrued bonuses of two billion dollars, it 10 says "assumed to be all accrued." Do you have an idea of what 11 that would mean? 12 A. No, I do not. 13 Q. At any point during the week, from the time that you were 14 involved in the initial negotiations through the sale hearing, 15 had you had any concept or had anybody ever said anything to 16 you that that two billion dollars was anything other than a 17 full requirement for Barclays to pay? 18 A. It was a full requirement. 19 Q. If you would turn your attention, sir, to tab 100 in your 20 book, which is Exhibit M-100 in evidence, also BCI Exhibit 132 21 in evidence. You'll see it's a Barclays' results announcement 22 for 2008. If I could ask you, sir, to turn to page 95 of that 23 results announcement. And again, I'll ask you to just skim, 24 sir, directing your attention to the item marked number 11, 25 "Acquisitions." If you'd just read through it enough to become</p>	<p style="text-align: right;">Page 217</p> <p style="text-align: center;">- 217 -</p> <p>1 Q. Did anybody ever suggest that to you at any other time? 2 A. The first I saw it was when we talked about it at the 3 deposition. 4 Q. That would be September of 2009? 5 A. Correct. 6 Q. Now, in that provision, sir, there's a reference to the 7 fair value of net assets. Was that part of your calculus in 8 determining whether or not the deal was a wash? 9 A. I can't comment on the term used in Barclays' document. 10 Q. I think I'm confusing the picture here. 11 A. Okay. 12 Q. Shut the book. Let's not talk about that document. I 13 want to get an -- I want to know what your conception was, Mr. 14 McDade. When you had reached your conclusion that the deal was 15 a wash, that it was a rough equivalent exchange of assets and 16 liabilities, you took into account that the liabilities had 17 some value, correct? 18 A. That's correct. 19 Q. So the deal couldn't be done irrespective of the value of 20 those liabilities, correct? 21 A. That's correct. 22 Q. And the formula you had to determine whether it was an 23 equivalent exchange of assets and liabilities took into account 24 the value of the assets, correct? 25 A. Yes.</p>

Exhibit 40

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

April 27, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 38</p> <p style="text-align: center;">- 38 -</p> <p>1 opinion that people engage in all the time. So he's not really</p> <p>2 being asked as an expert. He's being asked, in his capacity as</p> <p>3 a senior officer of Lehman at the time, his belief. I can</p> <p>4 weigh it for whatever probative value it has which may be zero.</p> <p>5 He can answer the question.</p> <p>6 Q. I think you -- did you answer the question?</p> <p>7 A. I think I did.</p> <p>8 Q. And just for the record, what was the answer?</p> <p>9 A. If you could --</p> <p>10 Q. I'll put the question again.</p> <p>11 MR. GAFFEY: Your Honor, I can stipulate the answer</p> <p>12 was "No, I did not."</p> <p>13 MR. BOIES: Okay.</p> <p>14 MR. GAFFEY: The beauty of LiveNote again, Your Honor.</p> <p>15 Q. And why -- why was that?</p> <p>16 A. I had worked with all of the individuals that potentially</p> <p>17 were part of that conflicted group for a long period of time.</p> <p>18 In fact, in most cases, well into decade plus I knew them of</p> <p>19 great integrity. And I think I described in my deposition, I</p> <p>20 knew they bled Lehman green.</p> <p>21 Q. Now, you are now aware that there came a time when the</p> <p>22 Barclays transaction was considered by the Lehman board,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. You were not personally involved in any of the board</p>	<p style="text-align: right;">Page 40</p> <p style="text-align: center;">- 40 -</p> <p>1 September 15th?</p> <p>2 A. I would use the example of the call that we got late in</p> <p>3 the week from the CME with respect to positions that we had had</p> <p>4 on that exchange.</p> <p>5 Q. And what happened there?</p> <p>6 A. Despite our asking for it not to happen, our positions</p> <p>7 were put out into an open auction process. And ultimately, we</p> <p>8 were taken out of those positions and the margin associated</p> <p>9 with those positions.</p> <p>10 Q. Let me be sure I understand what you're saying there. At</p> <p>11 the CME, you had certain positions and you had certain margin</p> <p>12 on deposit as collateral for those positions, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And when your positions were closed out by the CME, you</p> <p>15 lost your margin or collateral, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And how much was involved there approximately, if you</p> <p>18 recall?</p> <p>19 A. I don't have the specific recollection but it was in</p> <p>20 excess of a billion dollars, to the best of my recollection.</p> <p>21 Q. Now, you were asked some questions about the repo</p> <p>22 financing. Do you recall that?</p> <p>23 A. Yes.</p> <p>24 Q. And just for context, that was financing that was</p> <p>25 originally provided by the Fed to Lehman Brothers, is that</p>
<p style="text-align: right;">Page 39</p> <p style="text-align: center;">- 39 -</p> <p>1 meetings relating to the Barclays transaction, correct?</p> <p>2 A. I don't have a recollection of that.</p> <p>3 Q. You reviewed the APA prior to the time it was signed to</p> <p>4 make sure that it accurately reflected the final agreement,</p> <p>5 correct?</p> <p>6 A. Yes, I did.</p> <p>7 Q. After the APA was signed, is it fair to say that the</p> <p>8 valuation process started all over again at the end of that</p> <p>9 week?</p> <p>10 A. The valuation process continued through the week, yes.</p> <p>11 Q. And at some point it became clear that the securities that</p> <p>12 could be delivered to Barclays had decreased significantly</p> <p>13 between Tuesday when the APA was signed and Thursday.</p> <p>14 A. The composition of the assets had changed dramatically,</p> <p>15 yes.</p> <p>16 Q. And that was, in part, because of market decline, correct?</p> <p>17 A. In part, yes.</p> <p>18 Q. And it was, in part, because there was some collateral</p> <p>19 stuck at JPMorgan?</p> <p>20 A. Correct.</p> <p>21 Q. And it was, in part, because Lehman's positions had been</p> <p>22 wiped out or closed out at a number of places, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Can you describe some examples of where Lehman positions</p> <p>25 were wiped out or closed out during the course of the week of</p>	<p style="text-align: right;">Page 41</p> <p style="text-align: center;">- 41 -</p> <p>1 correct?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And then on the week of September 15th, the Fed asked</p> <p>4 Barclays to substitute Barclays for the Fed, correct?</p> <p>5 A. Yes, it did.</p> <p>6 Q. And so it was necessary, as part of this process, for</p> <p>7 there to be the same kind of valuation of the assets included</p> <p>8 in the repo as had been done previously in the week, correct?</p> <p>9 MR. GAFFEY: Objection.</p> <p>10 THE COURT: What's the basis for the objection?</p> <p>11 MR. GAFFEY: Foundation, Your Honor. No personal</p> <p>12 knowledge of how the repo valuations were done.</p> <p>13 THE COURT: All right. That objection is sustained.</p> <p>14 We can ask a few questions to get to the same point.</p> <p>15 Q. Do you have any understanding one way or the other as to</p> <p>16 whether the process for valuing the repo assets was the same</p> <p>17 process that you have described that went on earlier in the</p> <p>18 week in terms of trying to value Lehman's assets?</p> <p>19 A. I have an understanding that the process would have been</p> <p>20 similar, yes, and many of the assets would have been the same</p> <p>21 assets.</p> <p>22 Q. Let me follow up on that. What do you mean by many of the</p> <p>23 assets would have been the same assets?</p> <p>24 A. The inventory from Schedule 19 was -- and the marked</p> <p>25 process that we went through, that was originally financed</p>

<p style="text-align: right;">Page 46</p> <p style="text-align: center;">- 46 -</p> <p>1 those negotiations, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Who was involved in the negotiations with respect to</p> <p>4 exchange-traded derivatives and their collateral?</p> <p>5 A. I don't have a specific answer or knowledge of that.</p> <p>6 Q. Okay. You did recognize at the time that the margin or</p> <p>7 collateral that Lehman had with respect to exchange-traded</p> <p>8 derivatives, including at the OCC, could be wiped out if those</p> <p>9 positions were closed, correct?</p> <p>10 A. It had happened during the week already as an example with</p> <p>11 the CME so yes.</p> <p>12 Q. And the OCC was, in fact, threatening to close out</p> <p>13 Lehman's positions, correct, during that week?</p> <p>14 A. I have no knowledge of that.</p> <p>15 Q. One way or the other?</p> <p>16 A. No idea.</p> <p>17 Q. And because of what had happened at the CME, you had no</p> <p>18 confidence that Lehman would ever realize any value from the</p> <p>19 margin or collateral that it had at OCC, correct?</p> <p>20 A. No. I wouldn't make that a correct statement, no.</p> <p>21 Q. Let me ask you to look at page 275 of your deposition and,</p> <p>22 particularly, at line 3. And perhaps, for context, let me go</p> <p>23 to page 274, line 20:</p> <p>24 "Q. And those are positions and derivatives that LBI had?</p> <p>25 "A. Yes, exchange-traded.</p>	<p style="text-align: right;">Page 48</p> <p style="text-align: center;">- 48 -</p> <p>1 Q. Let me turn to the subject of compensation and the</p> <p>2 exposure to compensation that Barclays was taking over. First,</p> <p>3 you were present when a proffer was given to the Court</p> <p>4 concerning what your testimony would have been with respect to</p> <p>5 this subject matter, correct?</p> <p>6 A. Yes, I was.</p> <p>7 Q. And the Court was told that you would have testified that</p> <p>8 the exposure for employees -- Barclays' exposure for employees</p> <p>9 that accepted offers of employment was estimated to be an</p> <p>10 exposure of approximately two billion dollars, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you recognized that that was Barclays' exposure. It</p> <p>13 was not necessarily what Barclays would actually end up paying,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And I'd like to go through some of the components of that</p> <p>17 exposure. It included bonuses that Barclays was obligated to</p> <p>18 pay employees, correct?</p> <p>19 A. It included bonuses that Barclays would be paying</p> <p>20 employees, yes.</p> <p>21 Q. That is, it included an exposure -- I said obligated and I</p> <p>22 shouldn't have. And you corrected me and that's correct -- and</p> <p>23 I appreciate that. This included bonuses that Barclays was</p> <p>24 exposed to possibly paying, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 47</p> <p style="text-align: center;">- 47 -</p> <p>1 "Q. The exchange-traded, do those include derivatives that</p> <p>2 were traded on the Options Clearing Corporation or OCC?</p> <p>3 "A. Yes.</p> <p>4 "Q. Did you understand that in addition to the long positions</p> <p>5 and the short positions that Lehman had at OCC, it also had</p> <p>6 additional cash and assets that were deposited as margin and</p> <p>7 also clearing funds deposited at the OCC?</p> <p>8 "A. Yes, I did. But keep in mind the context, that we had had</p> <p>9 assets like that, for example, at the CME and they lost those</p> <p>10 assets over the course of the week. So we had no confidence</p> <p>11 that those were potentially our assets given what had been</p> <p>12 transpiring."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And was that accurate testimony at the time you gave it?</p> <p>16 A. That was accurate testimony, sir. I wouldn't have used</p> <p>17 those assets in a transaction of -- because I wasn't confident</p> <p>18 that we had those assets to give.</p> <p>19 Q. Right. So you didn't have any confidence you had those</p> <p>20 assets to give at that time?</p> <p>21 A. Correct.</p> <p>22 Q. And you didn't have any confidence, as you say here, "that</p> <p>23 those were potentially our assets given what had been</p> <p>24 transpiring", correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 49</p> <p style="text-align: center;">- 49 -</p> <p>1 Q. And the bonuses that Barclays was exposed to possibly</p> <p>2 paying employees were greater than the bonuses that were</p> <p>3 accrued on Lehman's books, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And that was true for a number of reasons, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. One of the reasons is that the bonuses that had been</p> <p>8 accrued had not been annualized, correct?</p> <p>9 A. They represented three-quarters of the year, yes.</p> <p>10 Q. Another reason is that Lehman paid bonuses both partly in</p> <p>11 stock and partly in cash, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And Lehman gave a higher proportion of its bonus in stock</p> <p>14 than other Wall Street firms, correct?</p> <p>15 A. Yes, we did.</p> <p>16 Q. And Lehman only accrued on its books that portion of the</p> <p>17 bonus that represented the cash portion, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Now, in addition, Barclays was exposed to possibly paying</p> <p>20 severances for people that were terminated, correct?</p> <p>21 A. Barclays was definitively exposed to severance for those</p> <p>22 that wouldn't be hired after the ninety-day period.</p> <p>23 Q. And the amount of severance would depend on how many</p> <p>24 people were actually terminated, correct?</p> <p>25 A. How many people and a constituent of who those people</p>

<p style="text-align: right;">Page 50</p> <p style="text-align: center;">- 50 -</p> <p>1 were.</p> <p>2 Q. That is, how much severance they were due.</p> <p>3 A. Correct.</p> <p>4 Q. In addition, Barclays was required to hire all of Lehman's</p> <p>5 employees at the time of the closing, correct?</p> <p>6 A. Yes, that's correct.</p> <p>7 Q. And it was required to keep those people employed, I</p> <p>8 think, for -- was it ninety days?</p> <p>9 A. Ninety days.</p> <p>10 Q. So Barclays was also exposed to paying the salaries of</p> <p>11 people that it didn't want for that ninety-day period, correct?</p> <p>12 A. Yes. I agree.</p> <p>13 Q. Did you make any effort to determine how much Barclays was</p> <p>14 exposed to pay for employees that it was taking on in addition</p> <p>15 to what was on Lehman's books?</p> <p>16 A. Did I personally?</p> <p>17 Q. Yes.</p> <p>18 A. I personally had reviewed the process that had taken place</p> <p>19 between mostly the human resources teams on both sides. But I</p> <p>20 personally did not go through the specific information or the</p> <p>21 specific data.</p> <p>22 Q. Based on your review of what the two sides had done, did</p> <p>23 you think that the estimated exposure that they had come up</p> <p>24 with was a reasonable one?</p> <p>25 A. Yes. I thought it was fair.</p>	<p style="text-align: right;">Page 52</p> <p style="text-align: center;">- 52 -</p> <p>1 LBI's business but who had contracts with Lehman affiliates?</p> <p>2 A. I have no knowledge of that.</p> <p>3 Q. Do you know whether the cure payment accrual numbers on</p> <p>4 Lehman's books included amounts owed for services that had</p> <p>5 already been performed but for which the vendor had not sent an</p> <p>6 invoice?</p> <p>7 A. I have no knowledge of that.</p> <p>8 Q. Do you know whether the accrual payments on Lehman's books</p> <p>9 included amounts for services to be performed during the sixty-</p> <p>10 day period following closing which Barclays was required to pay</p> <p>11 under Section 2.5 of the APA.</p> <p>12 A. I have no specific knowledge, again, of that.</p> <p>13 Q. Did you participate in coming up with the cure estimate</p> <p>14 that was included in some of the schedules relating to this</p> <p>15 transaction with Barclays?</p> <p>16 A. I did not participate in a specific way, no.</p> <p>17 Q. Who was responsible for that?</p> <p>18 A. That would have been Martin Kelly, the controller.</p> <p>19 Q. Did you recognize that whatever estimate Mr. Kelly came up</p> <p>20 with represented a ceiling or maximum exposure.</p> <p>21 A. It was described as a potential exposure.</p> <p>22 Q. A potential exposure. And you recognized that that</p> <p>23 exposure might or might not actually result in payments by</p> <p>24 Barclays, correct?</p> <p>25 A. Yes. Yes, I did.</p>
<p style="text-align: right;">Page 51</p> <p style="text-align: center;">- 51 -</p> <p>1 Q. Okay. Let me turn next to something that has been</p> <p>2 referred to sometimes as cure payments.</p> <p>3 A. Yes.</p> <p>4 Q. And you're familiar with that term, are you not?</p> <p>5 A. Yes, I am.</p> <p>6 Q. And the fact that Barclays had certain potential cure</p> <p>7 payments to make was one of the things that was included in the</p> <p>8 consideration of the deal that you were involved in, correct?</p> <p>9 A. Yes, it was.</p> <p>10 Q. Now, Lehman had on its books certain estimates of cure</p> <p>11 payments, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Now, the cure payments that were on Lehman's books only</p> <p>14 included cure payments that were already overdue, correct?</p> <p>15 A. I'm not aware in that specific detail.</p> <p>16 Q. Okay. That is, you don't know whether the numbers on</p> <p>17 Lehman's books included cure payments for what the estimate was</p> <p>18 that was going to be owed or only what was already past due?</p> <p>19 A. Yes. I have no knowledge of that.</p> <p>20 Q. Okay. Did some of the vendors that provided services and</p> <p>21 that were owed money provide invoices to Lehman's affiliates</p> <p>22 rather than to LBI directly?</p> <p>23 A. I have no knowledge of that.</p> <p>24 Q. Do you know whether the cure estimates on Lehman's books</p> <p>25 included amounts owed to vendors who performed services for</p>	<p style="text-align: right;">Page 53</p> <p style="text-align: center;">- 53 -</p> <p>1 Q. And you understood that Barclays had sixty days under the</p> <p>2 agreement to determine which contracts to assume, correct?</p> <p>3 A. Yes, I did.</p> <p>4 Q. And which contracts Barclays assumed would determine what</p> <p>5 its cure payments were, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And the process of determining what contracts Barclays was</p> <p>8 going to assume was not going to start until after the closing,</p> <p>9 correct?</p> <p>10 A. It couldn't start until after the closing given all the</p> <p>11 significant integration issues that had to take place.</p> <p>12 Q. And you understood that Barclays had complete discretion</p> <p>13 as to what contracts to accept and what contracts to reject,</p> <p>14 correct?</p> <p>15 A. Yes, I did.</p> <p>16 MR. BOIES: Your Honor, may I have a moment? Or would</p> <p>17 this be a convenient time for the --</p> <p>18 THE COURT: You may have more than a moment if you'd</p> <p>19 like a --</p> <p>20 MR. BOIES: Thank you.</p> <p>21 THE COURT: We're very close to our morning break.</p> <p>22 MR. BOIES: Thank you, Your Honor.</p> <p>23 THE COURT: Are you --</p> <p>24 MR. BOIES: Could we take a break now?</p> <p>25 THE COURT: Are you ready for a break? That's fine.</p>

<p style="text-align: right;">Page 122</p> <p style="text-align: center;">- 122 -</p> <p>1 still be used in the same manner.</p> <p>2 MR. GAFFEY: Thank you, Your Honor.</p> <p>3 BY MR. GAFFEY:</p> <p>4 Q. Mr. Berkenfeld, would you take a look through Movants'</p> <p>5 Trial Exhibit 254, and tell me if the collection of schedules</p> <p>6 annexed to that document are documents -- are documents of the</p> <p>7 type that you saw before you signed Movants' Exhibit 2?</p> <p>8 A. I don't recall having seen any of these schedules. I</p> <p>9 certainly don't recall any schedule that had two columns in it,</p> <p>10 like the one on page 1 and 2. This -- I've never seen these</p> <p>11 before. I've never seen the cover note. I have no knowledge</p> <p>12 of this.</p> <p>13 Q. Now, do you recall, sir, that when the final schedule, the</p> <p>14 one that you initialed, was put together, it was delivered into</p> <p>15 the room of negotiators by Mr. Kelly and Mr. Tonucci?</p> <p>16 A. I recall that it was delivered into the room of lawyers,</p> <p>17 not negotiators, in the corner conference room where everyone</p> <p>18 was sitting around the table working through the agreement.</p> <p>19 That's where I saw it. I don't know what was delivered into</p> <p>20 the negotiators.</p> <p>21 Q. So what you remember is Mr. Kelly and Mr. Tonucci bringing</p> <p>22 that schedule into the room for lawyers working on the drafting</p> <p>23 of the asset purchase agreement?</p> <p>24 A. My recollection is I remember Martin Kelly bringing it in,</p> <p>25 not them bringing it in together.</p>	<p style="text-align: right;">Page 124</p> <p style="text-align: center;">- 124 -</p> <p>1 said that there would be assets with a book value of</p> <p>2 approximately seventy billion and it listed government</p> <p>3 securities, commercial paper, corporate debt, corporate equity.</p> <p>4 It didn't say whether that was sixty-nine billion of government</p> <p>5 securities and one billion of corporate equities or whether it</p> <p>6 was one billion of government securities and sixty-nine billion</p> <p>7 of corporate equities. It just said seventy billion of all</p> <p>8 these different types of securities. And to me the</p> <p>9 significance of this schedule was that it gave guidance, a</p> <p>10 rough estimate of how that seventy billion -- and also on the</p> <p>11 liability side, too, on the short positions, how that was</p> <p>12 allocated across these very different -- different risk</p> <p>13 profile, different volatility securities. So, it mattered to</p> <p>14 me a lot whether the government number was forty, as indicated,</p> <p>15 or sixty-nine or one. And so, to me the significance of the</p> <p>16 schedule was not that it defined the agreement, it was not part</p> <p>17 of the agreement. It wasn't attached to the agreement. It</p> <p>18 really -- it wasn't incorporated by reference. The agreement</p> <p>19 was the purchase agreement. To me, the point of this was to</p> <p>20 provide some guidance around what was meant by the purchase</p> <p>21 agreement when there was a number for long positions and a</p> <p>22 number for short positions.</p> <p>23 Q. And the long position that you're referring to is the long</p> <p>24 position described in the asset purchase agreement itself, yes?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 123</p> <p style="text-align: center;">- 123 -</p> <p>1 Q. Now, do you know the source of the numbers on Movants'</p> <p>2 Exhibit 2?</p> <p>3 A. I do not.</p> <p>4 Q. Well, you know, sir, that it was from the finance</p> <p>5 department, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And by the finance department, you included Kelly and</p> <p>8 Tonucci, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And the adjusted total assets number on that schedule,</p> <p>11 sir, of 72.65 billion, do you recall, sir, that this was an</p> <p>12 estimate of the assets that would be transferred over from</p> <p>13 Lehman to Barclays?</p> <p>14 A. Maybe it's best if I describe what I thought this schedule</p> <p>15 was?</p> <p>16 Q. I don't mean to be rude, sir, but if you'd answer my</p> <p>17 question --</p> <p>18 A. Could you repeat your question?</p> <p>19 Q. -- I would prefer it. Do you recall that that schedule</p> <p>20 was an estimate of the assets that would be transferred over</p> <p>21 from Lehman to Barclays?</p> <p>22 A. I viewed this schedule as an estimate, as guidance, of</p> <p>23 what the allocation of securities would be that was referenced</p> <p>24 in the purchase agreement. The reason it was important to me,</p> <p>25 important enough to initial, is that the purchase agreement</p>	<p style="text-align: right;">Page 125</p> <p style="text-align: center;">- 125 -</p> <p>1 Q. And what this schedule is meant to do is to take that</p> <p>2 seventy billion dollar book value long position described in</p> <p>3 the asset purchase agreement and break it down into its</p> <p>4 component parts?</p> <p>5 A. That's correct.</p> <p>6 Q. And the reason that that adds up to more than seventy</p> <p>7 billion is it also takes into account the residential -- the</p> <p>8 resis, the mortgage basket, correct?</p> <p>9 A. Yes. The mortgages were covered in another subsection of</p> <p>10 the purchase agreement.</p> <p>11 Q. Okay. When you take the 2.7 shown on the asset side for</p> <p>12 mortgages out of the total of assets, you come to roughly the</p> <p>13 seventy billion dollar book value long position described in</p> <p>14 the asset purchase agreement, is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. And that's how that schedule relates to the asset purchase</p> <p>17 agreement that was executed on the 16th of September, correct?</p> <p>18 A. In my mind that's how it related, yes.</p> <p>19 Q. And that's what you mean when you describe it as guidance</p> <p>20 for the deal, is that right?</p> <p>21 A. A guidance for that provision of the asset purchase</p> <p>22 agreement, yes.</p> <p>23 Q. And in total, it was guidance for the value of the total</p> <p>24 assets that it purported to allocate that would be transferred</p> <p>25 in the long position, correct?</p>

<p>Page 130</p> <p>- 130 -</p> <p>1 Q. Do you have your deposition there?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Could you turn to page 62, please? And directing your</p> <p>4 attention to line 20 through page 63, line 7. Are you there?</p> <p>5 A. Um-hmm.</p> <p>6 Q. And you, just for context, sir, you'll see that Movants'</p> <p>7 Exhibit 2 was Deposition Exhibit 19? You notice that? I just</p> <p>8 want to put the question in context for you.</p> <p>9 A. Um-hum.</p> <p>10 Q. Okay.</p> <p>11 A. Yes.</p> <p>12 "Q. Again, for 19, sir, do you know if the figures there on</p> <p>13 the asset side for those asset classes of government agency,</p> <p>14 commercial paper, etcetera, bore any relation to the marks at</p> <p>15 which they were shown on Lehman's books?</p> <p>16 "A. My understanding is that they were based on the marks.</p> <p>17 "Q. How did you get that understanding?</p> <p>18 "A. From the same source. Again, in the delivery of the</p> <p>19 schedule from Martin and Paolo.</p> <p>20 "Q. Did they say something to you?</p> <p>21 "A. I don't recall exactly what they said."</p> <p>22 Were those answer's truthful when you gave them at your</p> <p>23 deposition?</p> <p>24 A. They were and I think they're consistent with what I said.</p> <p>25 The valuations were based on marks that started as of Friday</p>	<p>Page 132</p> <p>- 132 -</p> <p>1 a different situation, different context. Do I believe that</p> <p>2 they were based on the marks? Yes. Do I believe that they</p> <p>3 started with the marks on Friday to arrive at marks that were</p> <p>4 relevant for Monday and then Tuesday? Yes.</p> <p>5 Q. So, at your deposition when you said, "My understanding is</p> <p>6 that they were based on the marks", what you were trying to</p> <p>7 tell me was they were based on Friday's marks as adjusted into</p> <p>8 Monday based on a process in which you were not involved. Am I</p> <p>9 understanding your testimony correctly, sir?</p> <p>10 A. No. At the time I gave -- I answered a question that you</p> <p>11 posed to me at the time and you didn't ask me any follow-up</p> <p>12 questions at the time. And that was a truthful answer at the</p> <p>13 time. They were based on the marks. But it was a more</p> <p>14 complicated question and it required a more complicated answer.</p> <p>15 Q. I just want to explore a little bit by you meant with the</p> <p>16 two word phrase, "the marks" at your deposition. By "the</p> <p>17 marks", did you mean the number that was generated through a</p> <p>18 process that was not in the ordinary course of business to</p> <p>19 generate what should have been the marks?</p> <p>20 A. I meant they were based on the then relevant current</p> <p>21 marks.</p> <p>22 Q. And the then relevant current marks were as of the 16th of</p> <p>23 September when that schedule marked as M-2 was generated?</p> <p>24 A. Yes.</p> <p>25 Q. And that's what the asset purchase agreement described it</p>
<p>Page 131</p> <p>- 131 -</p> <p>1 and then were revised to reflect what the mark should have been</p> <p>2 as of Monday and Tuesday.</p> <p>3 Q. We'll come to that, sir.</p> <p>4 A. Okay.</p> <p>5 Q. Was that truthful testimony when you gave it?</p> <p>6 A. Yes.</p> <p>7 Q. Your understanding is that the figures on the schedule</p> <p>8 that were delivered to you by Kelly and Tonucci were based on</p> <p>9 Lehman's marks?</p> <p>10 A. Well, I said they were based on "the" marks. When you say</p> <p>11 just "the" marks --</p> <p>12 Q. Do you think they were based on Barclays' marks, sir?</p> <p>13 A. No.</p> <p>14 Q. All right. What marks were you referring to when you said</p> <p>15 "the marks" in your deposition? Are you referring to Lehman's</p> <p>16 marks?</p> <p>17 A. I don't think we had then current marks as of Monday.</p> <p>18 It's sort of within the context of what was going on where we</p> <p>19 had just filed for bankruptcy and the markets were as chaotic</p> <p>20 as imaginable. I don't think that there was a real time</p> <p>21 marking going on by these guys at a Lehman system independent.</p> <p>22 So, based on the marks at the time -- there wasn't a close</p> <p>23 of books on Monday with Lehman's marks in the ordinary course</p> <p>24 of business, as I understand it, like there had been for all</p> <p>25 the prior days in the week before and the years before. It was</p>	<p>Page 133</p> <p>- 133 -</p> <p>1 to be. Is that correct?</p> <p>2 A. The asset purchase agreement, again, separating the</p> <p>3 schedule and the asset purchase agreement, the asset -- the</p> <p>4 schedule was not part of the asset purchase agreement. It very</p> <p>5 easily could have been. It would have taken two words to</p> <p>6 attach it to the back of it and say this is what we mean by</p> <p>7 book value of seventy billion of securities positions. It</p> <p>8 wasn't. It deliberately wasn't.</p> <p>9 Again, I think that the significance of the schedule is</p> <p>10 somewhat overstated. You know, there were a lot of</p> <p>11 sophisticated lawyers in that room from the top law firms.</p> <p>12 They knew that schedule was being prepared. It would have been</p> <p>13 a very simple matter to just incorporate it and it wasn't done.</p> <p>14 It was not meant as part as the asset purchase agreement. And</p> <p>15 I think -- you know, I said that at the time of my deposition</p> <p>16 too.</p> <p>17 Q. Would you take a look, sir, at the asset purchase</p> <p>18 agreement which is in evidence as Exhibit M-1? It's in your</p> <p>19 book. And turn to page -- well, first let's turn to the last</p> <p>20 page. And just for the sake of good order, sir, is that your</p> <p>21 signature?</p> <p>22 A. For Lehman Brothers Holdings and Lehman Brothers, Inc.,</p> <p>23 yes it is.</p> <p>24 Q. You signed for both entities?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 166</p> <p style="text-align: center;">- 166 -</p> <p>1 A. I didn't really focus on those two parts in the context of 2 the schedule. I think that for those two lines, I look to the 3 asset purchase agreement. 4 Going back to what I testified before, to me, the purpose 5 of the schedule was to allocate the securities positions to be 6 clear, those assets; the governments, the corporate debt, the 7 corporate equity, and the short positions, trading positions. 8 Again, the schedule is not the agreement. It was not 9 meant to be a balance sheet of the deal. It just never had 10 that significance to it; that meaning. And we had a lot of 11 lawyers sitting around the table. We all could have agreed or 12 someone could have suggested let's put this on the back of the 13 agreement. Let's submit it to the Court. None of that was the 14 purpose of this agreement. It was relevant as guidance to how 15 those securities positions should be allocated because without 16 it, there were lots of different ways it could have been 17 allocated. And it was changing and I did initial it and say 18 this one should be final so we have a sense that out of that 19 seventy billion, forty is governments. Not one, not sixty- 20 nine. 21 But with regard to compensation and cure payments, in my 22 mind, the cure payments and the compensation were dealt with 23 specifically in the asset purchase agreement and I would look 24 to the asset purchase agreement in terms of what the 25 obligations of the parties were.</p>	<p style="text-align: right;">Page 168</p> <p style="text-align: center;">- 168 -</p> <p>1 balanced? 2 "A. To my recollection, no one had ever suggested that to me. 3 "Q. Was it the contemplation? Was it part of the structure of 4 the transaction that Barclays was, in fact, going to undertake 5 to assume liabilities in roughly the amounts guided by the 6 schedule marked as Exhibit 19? 7 "A. I believe it was the understanding that Barclays would 8 assume liabilities that were at the time estimated roughly to 9 be in this amount." 10 When I asked that question and you gave that answer, was 11 that truthful testimony, sir? 12 A. Yes, it was. I should have said I believe it was my 13 understanding. I can't speak to others, but yes. And I think 14 that's consistent with what I just said. 15 Q. Okay. So, let's go back to the question I asked you a 16 moment ago with regard to Exhibit M-2, the financial schedule. 17 MR. GAFFEY: Can we have that up here, please, Steve? 18 Q. Now, do you recall I asked you a few moments ago whether 19 or not the comp and cure numbers were plug numbers to make this 20 sheet appear to be balanced? You told me, no. 21 A. That's correct. 22 Q. Okay. And then I asked you if -- whether it was the 23 contemplation, was it part of the structure of the transaction 24 with Barclays, in fact, was going to assume -- was going to 25 undertake to assume liabilities in roughly the amounts guided</p>
<p style="text-align: right;">Page 167</p> <p style="text-align: center;">- 167 -</p> <p>1 Q. Do you have your deposition transcript there? 2 A. Yeah. 3 Q. Would you turn to page 104, please and directing your 4 attention to 104 at line 13 through 105, line 4. 5 MR. GAFFEY: Steve, would you put the schedule up 6 there so we can see its deposition exhibit number? The whole 7 thing. Shrink it. 8 Q. Just before I read that to you, sir, you recall that this 9 schedule we've been talking about today, marked as M-2, was 10 Deposition Exhibit 19 at your deposition? You can take a look 11 at the tag on it. 12 A. I'm sorry, the tag 19 on my deposition? 13 Q. No, sir. Take a look at the tab -- actually, if you -- 14 can you see the screen? 15 A. Yes. 16 Q. You see that's called "Deposition Exhibit 19" as well? 17 A. Yes. 18 Q. Okay. I just want you to understand the question as I 19 read it to you. 20 A. Okay. 21 Q. And now, back on page 104 of your deposition starting at 22 line 13. 23 "Q. Did anyone ever suggest to you in sum or substance, sir, 24 when you saw the financial schedule marked as Exhibit 19 that 25 the comp and cure numbers were just plug numbers to make it</p>	<p style="text-align: right;">Page 169</p> <p style="text-align: center;">- 169 -</p> <p>1 by that exhibit, M-2? 2 A. I believe my answer was I wasn't looking at the schedule 3 for guidance for that. I wasn't looking to the schedule. 4 There was an understanding, my understanding, my impression, 5 that there would be comp and cure payments in about those 6 amounts and my recollection, again, from reading things before 7 testimony was that the numbers that were represented to the 8 Court around comp and cure payments were not those numbers. 9 They were two and half for comp and one and a half for cure, I 10 think. But regardless, the cure payments was something that 11 was going to be determined over time. And there might have 12 been estimates that were made; I'm not sure where they came 13 from. But I didn't view this as a obligation on the part of 14 Barclays to assume cure payment liabilities of 2.25 billion. I 15 didn't think the schedule stood for that. And I didn't think 16 that the schedule stood for that there was an obligation to pay 17 comp for two billion. 18 From the person who initialed it, that's not what I 19 thought this schedule was. I think there were provisions on 20 the asset purchase agreement on those points. It would have 21 been easy enough to incorporate those numbers to get the 22 schedule to bring those numbers into the asset purchase 23 agreement or to make the schedule part of the asset purchase 24 agreement and that wasn't done. 25 Q. And with regard to the schedules, sir, when the agreement</p>

<p style="text-align: right;">Page 170</p> <p style="text-align: center;">- 170 -</p> <p>1 that was going to be submitted to the Court was finalized, was</p> <p>2 it your understanding that Barclays would assume liabilities</p> <p>3 that were estimated roughly in those amounts?</p> <p>4 A. My understanding, when it was presented to the Court, was</p> <p>5 that Barclays could be assuming liabilities up to the amounts</p> <p>6 that were presented to the Court, not based on what was in the</p> <p>7 schedule.</p> <p>8 Q. Now, when you say Barclays could have been assuming</p> <p>9 liabilities up to the amounts, did you track whether the Court</p> <p>10 was told that the estimates of liabilities for comp and cure</p> <p>11 were ceilings as opposed to estimates of what Barclays actually</p> <p>12 would pay?</p> <p>13 A. Poor choice of words on my part to say up to but I don't</p> <p>14 think it was -- I don't recall it being a ceiling. I think it</p> <p>15 was for cure payments an open-ended question. It depended on</p> <p>16 what -- what contracts were going to be assumed and what</p> <p>17 Barclays felt it needed to conduct the business in the ordinary</p> <p>18 course.</p> <p>19 Q. Let's talk about the comp number for a minute. Let's stay</p> <p>20 away from what contracts would be assumed. We'll come to that,</p> <p>21 but let's look at the comp number for a minute. Was it your</p> <p>22 understanding when you signed the asset purchase agreement that</p> <p>23 Barclays was going to pay compensation amounts in roughly the</p> <p>24 amount shown on Exhibit M-2, two billion dollars?</p> <p>25 A. My understanding of the comp amount came from the asset</p>	<p style="text-align: right;">Page 172</p> <p style="text-align: center;">- 172 -</p> <p>1 BY MR. GAFFNEY:</p> <p>2 Q. So, Mr. Berkenfeld, let's go back to page 104, line 20, of</p> <p>3 your deposition through 105, line 4.</p> <p>4 "Q. Was it the contemplation, was it part of the structure of</p> <p>5 the transaction that Barclays was in fact going to undertake to</p> <p>6 assume liabilities in roughly the amounts guided by the</p> <p>7 schedule marked as Exhibit 19?</p> <p>8 "A. I believe it was the understanding Barclays would assume</p> <p>9 liabilities that were at the time estimated roughly to be in</p> <p>10 this amount."</p> <p>11 Was your testimony in response to that question truthful</p> <p>12 at the time you gave it?</p> <p>13 A. Yes, it was and I didn't say in my answer "guided by the</p> <p>14 schedule". That was in your question. It was not in my</p> <p>15 answer. I said that "it was my understanding that Barclays</p> <p>16 would assume liabilities that were at the time estimated</p> <p>17 roughly to be in this amount" but I didn't think it was guided</p> <p>18 by the schedule.</p> <p>19 Q. Let's -- can we -- I just want to go back to this. So,</p> <p>20 when I ask you was it -- the contemplation, "was it part of the</p> <p>21 structure of the transaction that Barclays was, in fact, going</p> <p>22 to undertake to assume liabilities in roughly the amounts</p> <p>23 guided by the schedule marked as Exhibit 19", are you telling</p> <p>24 us now your answer had nothing to do with whether it was guided</p> <p>25 by the schedule marked as Exhibit 19?</p>
<p style="text-align: right;">Page 171</p> <p style="text-align: center;">- 171 -</p> <p>1 purchase agreement. It didn't come from the schedule.</p> <p>2 Q. Sir, I'm going to have to ask you look again at page 104</p> <p>3 of your deposition starting at line 20 and reading over to line</p> <p>4 4 on page 105. Question --</p> <p>5 MR. SCHILLER: Your Honor?</p> <p>6 THE COURT: Yes.</p> <p>7 MR. SCHILLER: Respectfully, I would like to object on</p> <p>8 the grounds of completeness and ask that my friend read the</p> <p>9 next question and the next answer as well. That is line 5 on</p> <p>10 page 105 through line 24 on that page, Your Honor. Thank you.</p> <p>11 THE COURT: Okay. There's been a request for some</p> <p>12 additional context.</p> <p>13 MR. GAFFEY: Can I read what I want and get an answer,</p> <p>14 and then I'll read that? How's that?</p> <p>15 THE COURT: That sounds fine to me.</p> <p>16 MR. SCHILLER: I object to that.</p> <p>17 THE COURT: Well, this is -- this is the examination</p> <p>18 within the movant's case of a current Barclays employee and</p> <p>19 without getting into who's hostile to whom at this point, I'm</p> <p>20 going to let the questioning proceed in the manner proposed by</p> <p>21 Mr. Gaffney over your objection. He'll then read the material</p> <p>22 that you'd like him to read and, trust me, I can process this</p> <p>23 information in whatever order it's presented.</p> <p>24 MR. SCHILLER: I appreciate it, Judge.</p> <p>25 THE COURT: Thank you.</p>	<p style="text-align: right;">Page 173</p> <p style="text-align: center;">- 173 -</p> <p>1 A. I think the distinction I'm trying to make, which I was</p> <p>2 making before, is that --</p> <p>3 Q. Sir, with respect, could I have an answer to the question</p> <p>4 I asked? My question was when I asked you a question that</p> <p>5 ended "in roughly the amounts guided by this schedule marked as</p> <p>6 Exhibit 19", was your answer meant not to relate to the amounts</p> <p>7 guided by the schedule marked in Exhibit 19? That's a yes or</p> <p>8 no question, sir?</p> <p>9 A. Then I guess my answer is, no.</p> <p>10 Q. So, you understood the question that I asked you "to</p> <p>11 include whether or not the amounts were guided by the schedule</p> <p>12 marked as Exhibit 19" when I asked you that question?</p> <p>13 A. I don't remember what I was thinking at the time but what</p> <p>14 I was saying was that the amounts, the rough estimates, were</p> <p>15 consistent. They weren't guided by the schedule. It's a</p> <p>16 comment I've been making throughout my testimony.</p> <p>17 The schedule is not the agreement. It wasn't even</p> <p>18 attached. These numbers weren't brought in. So, I didn't view</p> <p>19 the deal -- let's talk about the tail wagging the dog. I</p> <p>20 didn't view the schedule as guiding the deal. The schedule to</p> <p>21 me had a purpose of allocating assets. The asset purchase</p> <p>22 agreement was the deal between the parties, not the schedule.</p> <p>23 It was not meant as a balance sheet of the transaction. I've</p> <p>24 never viewed it that way. I didn't initial it in that context.</p> <p>25 It doesn't include all the elements of the transaction. It</p>

<p style="text-align: right;">Page 174</p> <p style="text-align: center;">- 174 -</p> <p>1 wasn't contemplated that way. And so, at the time of my 2 deposition and today, I consistently say that these decisions 3 weren't guided by the schedule. It makes it sound like the 4 schedule was the agreement between the parties, and it wasn't. 5 The asset purchase agreement was the agreement between the 6 parties. 7 Q. Did it come to your attention during the week when the 8 hearings were held in this court on the 17th and the 19th that 9 the two billion dollar comp number was given to the Court? 10 A. My understanding was that a comp number was given to the 11 Court that originally was higher than the two billion but at 12 the time, I think of Friday was at two billion. 13 Q. And did the two billion dollar number that was given the 14 Court, sir, bear any relation to the two billion dollar number 15 on that schedule? 16 A. Well, the numbers aren't consistent. 17 Q. Okay. Did it bear any relation to the calculation of two 18 billion dollars for comp on that schedule? 19 A. Bear relation, yes. 20 Q. And at some point, I believe by the 17th, that is the time 21 between the preparation of this schedule and the submission of 22 the sale motion, the calculation for cure came to 1.5, reduced 23 from two and a quarter, do you recall that? 24 A. I -- I don't recall how it got from one number to the 25 other. I wasn't part of those discussions.</p>	<p style="text-align: right;">Page 176</p> <p style="text-align: center;">- 176 -</p> <p>1 rough estimate that there were going to be a lot of factors 2 that were going to weigh into exactly what -- 3 Q. Okay. 4 A. -- it was going to pay. 5 Q. And -- but the 1.5 that was given to the Court, rough, I 6 hear what you're saying, but the 1.5 was meant to be an 7 estimate to the Court -- an estimate to the Court of what 8 Barclays could wind up paying in cure amounts? 9 A. My impression of it was it was sort of the -- the best 10 good faith effort -- estimate at the time -- 11 Q. Okay. 12 A. -- and could be made at the time. 13 Q. And when you had that understanding that it was the best 14 good faith effort that could be had at the time, did you have 15 any information about what Barclays' plan was with respect to 16 the amounts that it would undertake for contract cure? 17 A. No, I did not. 18 Q. And did you have any information as to Barclays' plan for 19 how much it would spend for compensation? 20 A. No, I did not. 21 Q. And was it known to you when the schedule was prepared on 22 the 16th of September, that the comp amount shown on that 23 schedule was a billion dollars in excess of the amount accrued 24 on Lehman's books? 25 A. I was not aware of that.</p>
<p style="text-align: right;">Page 175</p> <p style="text-align: center;">- 175 -</p> <p>1 Q. Okay. You do recall the fact that it went from two and a 2 quarter to 1.5? 3 A. I recall that a 1.5 number was presented to the Court. 4 Q. Okay. And you were working closely with the lawyers who 5 were preparing and drafting the asset purchase agreement and 6 who were preparing the sale motion to be submitted to the 7 Court, correct? 8 A. Working closely when? 9 Q. On the 16th of September. 10 A. Well, I described before what I was doing, but this was 11 one piece of many things that I was doing. And so was I with 12 my sleeves rolled up, there around the clock, working through 13 the agreement? No, that's not correct. 14 Q. You had a general idea that estimates for comp and cure 15 were being given to the Court as part of the package of 16 materials submitted to seek the Court's approval of a 17 transaction, yes? 18 A. Yes, that's correct. 19 Q. And was it your understanding that the estimates for comp 20 and cure that were given to the Court as part of the package 21 for seeking its approval were meant to be understood to be 22 estimates of what Barclays actually would wind up paying? 23 A. My understanding, my impression, was that they were rough 24 estimates of what Barclays might be paying. In particular on 25 the cure, though, I think it was -- is extre -- exceedingly</p>	<p style="text-align: right;">Page 177</p> <p style="text-align: center;">- 177 -</p> <p>1 Q. Did that ever come to your attention before the asset 2 purchase agreement was submitted? 3 A. No, it did not. 4 Q. Just to return a bit, sir, to the topic of marking books. 5 If you wanted to know whether the books -- whether Lehman's 6 books accurately reflected market values on the 15th or 16th of 7 September, you would ask the chief financial officer, correct? 8 A. I would start with chief financial officer, Ian Lowitt and 9 the controller. 10 Q. And another person you would ask would be Martin Kelly, 11 correct? 12 A. Correct. 13 Q. Now, do you know if the values that were calculated which 14 wound up being collected in this allocation on Exhibit 2 were 15 done an asset-by-asset basis -- an asset class-by-class basis 16 or any other basis? 17 A. I don't know. 18 Q. Did you have any understanding at the time when you signed 19 the schedule? 20 A. No, I -- I don't think I did. I wasn't involved in that 21 process, I wasn't participating or observing. It came to me as 22 more of a completed process. 23 Q. Now, to your knowledge, sir, none of the lawyers involved 24 in the drafting of the asset purchase agreement were aware of 25 any loss on assets in the structure of the deal? Is that</p>

Exhibit 41

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

April 28, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 30</p> <p style="text-align: center;">- 30 -</p> <p>1 Q. Okay. Taking a look at the balance sheet that's marked as 2 Movants' Trial Exhibit 2 -- 3 A. Yes. 4 Q. -- did this balance sheet come to the attention of you or 5 your team members at Weil Gotshal at around the time that the 6 asset purchase agreement was being negotiated? 7 A. I can only speak for myself. 8 Q. Sure. 9 A. There were a number of balance sheets -- or I wouldn't 10 call them balance sheets. People were sitting at PCs making 11 various assumptions. You have to understand that the system 12 wasn't exactly working when LBIE, the English entity went into 13 administration in the United Kingdom. It basically closed down 14 the system. So getting information was very difficult. 15 Also, in the context of the chaos that prevailed, getting 16 information was very difficult. So my recollection is seeing 17 people sitting around the table with PCs making assumptions and 18 spitting out paper. 19 I wouldn't call this a balance sheet. I mean, there's so 20 many zeros on it that I'm not sure what it reflects. 21 Q. Have you seen the document before? 22 A. I did see the document before. 23 Q. When did you first see it? 24 A. I don't have a specific recollection. I would say 25 probably on Tuesday or Wednesday.</p>	<p style="text-align: right;">Page 32</p> <p style="text-align: center;">- 32 -</p> <p>1 document marked as Exhibit M-2? 2 A. I don't believe so. I'd be shocked if they did. 3 Q. Now, I direct your attention, Mr. Miller, to the figures 4 in the lower right-hand corner on the "Liabilities" side. 5 A. Yes. 6 Q. -- for "Comp and Cure". Do you know the basis for those 7 numbers? 8 A. Well, the cure amount, which I think changed -- I don't 9 recall. The cure amount was an estimate of the potential 10 exposure in connection with the transaction. Under the terms 11 of the transaction, there was an opportunity for Barclays to 12 take assignments of executory contracts and perhaps leases. 13 Obviously, in the short time frame, there had been no 14 determination as to what executory contracts or what leases 15 would be assumed. And a figure was derived as to the potential 16 exposure. This was a contingent figure. If they assumed -- I 17 mean, if all those contracts were assumed by the debtor-in- 18 possession and then assigned to Barclays, these -- this amount 19 might be the cure amount. 20 In connection with the compensation, that also was an 21 estimate as to the possible exposure for Lehman employees going 22 over to Barclays who would either be terminated or were 23 entitled to bonuses. So it was supposed to cover both 24 severance pay and bonuses. 25 And as I said before, it was an estimate. I don't</p>
<p style="text-align: right;">Page 31</p> <p style="text-align: center;">- 31 -</p> <p>1 Q. Okay. And did you see it in connection with your work 2 regarding the asset purchase agreement? 3 A. I'm sorry? 4 Q. What was the context in which you saw it? 5 A. Probably in connection with the preparation for the 6 hearings. 7 Q. Okay. And who provided you with the document? 8 A. I think it came internally through somebody at Weil. 9 Q. Okay. And in preparing Mr. McDade for his testimony at 10 the sale hearing, did you review the document with him? 11 A. No. 12 Q. In discussions with your colleagues at Weil Gotshal or 13 with the Lehman businesspeople involved in the drafting of the 14 asset purchase agreement, did you have any discussions with 15 them about the document? 16 A. No. By Wednesday of that week, the value of the assets 17 had deteriorated so substantially that this document was 18 virtually useless. 19 Q. Was there a discussion about that document? 20 A. There was a discussion about the deterioration in the 21 values. 22 Q. Was the discussion related to the document marked as 23 Exhibit M-2? 24 A. No. 25 Q. And did Weil Gotshal have any role in preparing the</p>	<p style="text-align: right;">Page 33</p> <p style="text-align: center;">- 33 -</p> <p>1 remember -- I don't recall -- I don't think I ever knew who 2 really made the estimate. 3 Q. Do you know -- did you ever speak to Martin Kelly about 4 those estimates? 5 A. I have never spoken to Martin Kelly. I don't believe I've 6 ever spoken to him up through today. 7 Q. Have you ever spoken to Paolo Tonucci about those 8 estimates? 9 A. Oh, yes. Not this. 10 Q. About these numbers? 11 A. Not about these numbers, no. 12 Q. And I take it from your answer, sir, you don't have 13 knowledge as to how these figures were derived, how they were 14 calculated. 15 A. They were calculated on the basis of somebody at Lehman 16 reviewing the executory contracts and leases and coming up with 17 the estimate. On the compensation, I think they looked at the 18 compensation records for 2007. 19 Q. In the course of dealing with the Barclays side of the 20 table on the negotiations, do you know, sir, if any Lehman 21 personnel or representatives of Lehman personnel inquired of 22 Barclays as to what it planned to pay in terms of comp and cure 23 after the transaction? 24 A. I think that's covered by the asset purchase agreement. 25 Q. I'm sorry, sir. I didn't hear your answer.</p>

<p style="text-align: right;">Page 114</p> <p style="text-align: center;">- 114 -</p> <p>1 A. Yes, I do.</p> <p>2 Q. Was there -- and you described the melting iceberg which</p> <p>3 you dramatically reviewed with the Court that important evening</p> <p>4 of September 19th. It's 2010 now but that ice cube was melting</p> <p>5 in September of 2008, wasn't it?</p> <p>6 A. I would say with some speed.</p> <p>7 Q. Was there time for an integration analysis for Barclays</p> <p>8 and Lehman as in an ordinary merger, to sit down and see how</p> <p>9 these businesses could be merged?</p> <p>10 A. This was not an ordinary transaction in any sense of the</p> <p>11 word.</p> <p>12 Q. Was there any time --</p> <p>13 A. Can I finish?</p> <p>14 Q. I'm sorry; yes, sir.</p> <p>15 A. This was, as I said before, the most hectic, difficult</p> <p>16 transaction I've ever been involved in, different from any</p> <p>17 financial crisis, maybe 10,000 times more difficult than the</p> <p>18 Refco case in terms of a transaction.</p> <p>19 In the context that this was not peculiar to Lehman, we</p> <p>20 were in an economy which was going through the floor and that's</p> <p>21 why the federal government was actively involved.</p> <p>22 Q. And there was precious little time to do a synergistic</p> <p>23 review of what contracts would be assumed, if those contracts</p> <p>24 could even be identified and located, correct?</p> <p>25 A. I believe that to be correct.</p>	<p style="text-align: right;">Page 116</p> <p style="text-align: center;">- 116 -</p> <p>1 irrelevant to what you were doing with your colleagues that</p> <p>2 week?</p> <p>3 A. I don't think accounting for negative good will was a</p> <p>4 particularly important thing.</p> <p>5 Q. And with respect to the two billion dollar estimate of</p> <p>6 exposure for both bonus and severance, which you addressed</p> <p>7 briefly, that number could be known with precision either</p> <p>8 because it wasn't known how many employees would accept at</p> <p>9 Barclays or how many would terminate and for those accepted how</p> <p>10 long they'd be there.</p> <p>11 A. I think I testified to that.</p> <p>12 Q. You were asked earlier about discussion of whether to take</p> <p>13 the clarification letter back to court on the evening before</p> <p>14 the closing was completed, Sunday night, do you remember that?</p> <p>15 Subject earlier in the --</p> <p>16 A. Over the weekend there was a discussion about that.</p> <p>17 Q. Yes, over the weekend.</p> <p>18 A. Yes.</p> <p>19 Q. Now in April of 2010 our economy is a different place then</p> <p>20 it was, as you described the economy in the circumstances of</p> <p>21 Lehman in September 2008, correct?</p> <p>22 A. Is the economy different now?</p> <p>23 Q. Yes.</p> <p>24 A. Then it was back in September of 2008?</p> <p>25 Q. It's much improved, isn't it?</p>
<p style="text-align: right;">Page 115</p> <p style="text-align: center;">- 115 -</p> <p>1 Q. There was no way to know what the number for cure would be</p> <p>2 in the amount of time available to negotiate the sale that</p> <p>3 week.</p> <p>4 A. My recollection is, there were thousands of contracts that</p> <p>5 had to be reviewed. We wanted to set up a process that would</p> <p>6 not be a tremendous burden on the court, where parties would,</p> <p>7 in effect, negotiate whether the contract should be assumed,</p> <p>8 cured, defaults waved, etcetera, and there was a process that</p> <p>9 was being set up, almost like an EDR process.</p> <p>10 Q. No one knew what contracts would be assumed?</p> <p>11 A. On the 19th and over the weekend certainly not.</p> <p>12 Q. And no one knew, on the 19th or over the weekend, whether</p> <p>13 Barclays would get a bargain from the vendor on any of those</p> <p>14 contracts?</p> <p>15 A. That's correct.</p> <p>16 Q. So there was, it's fair to say, a wide range of what</p> <p>17 Barclays would choose to do and expend between some number and</p> <p>18 1.5 billion, correct?</p> <p>19 A. Could be.</p> <p>20 Q. Okay. You were not concerned, I think you've indicated</p> <p>21 already, with what Barclays ultimate accounting treatment for</p> <p>22 cure payments would be, is that right?</p> <p>23 A. I didn't have any major concern about that. The -- how</p> <p>24 you treat things for accounting purpose always mystified me.</p> <p>25 Q. In fact, you generally considered Barclays' accounting</p>	<p style="text-align: right;">Page 117</p> <p style="text-align: center;">- 117 -</p> <p>1 A. I guess you can say so. I think the president might say</p> <p>2 so.</p> <p>3 Q. On April 9th, movants said to this Court that it was an</p> <p>4 egregious mistake for Weil Gotshal and other lawyers involved</p> <p>5 in Lehman, not to bring the clarification letter back to the</p> <p>6 Court.</p> <p>7 MR. GAFFEY: Misquotes the papers, Your Honor</p> <p>8 MR. SCHILLER: "Egregious mistake" is in the</p> <p>9 transcript, Judge.</p> <p>10 MR. GAFFEY: Those two words are in it but not as Mr.</p> <p>11 Schiller just read it, Your Honor</p> <p>12 THE COURT: Right. It's a misleading question then.</p> <p>13 Why don't you rephrase it?</p> <p>14 Q. If my friend referred to the decision not to bring the</p> <p>15 clarification letter back as a mistake what is your view of</p> <p>16 that?</p> <p>17 A. The issues was whether there was any material change in</p> <p>18 the basic transaction which had been presented to the Court.</p> <p>19 And after discussion with a number of people including, I</p> <p>20 think, the creditors' committee representatives who where there</p> <p>21 the conclusion was there was no material change that required</p> <p>22 going back to the Court.</p> <p>23 In fact, as late as, I think, two months after the closing</p> <p>24 in a meeting with the attorneys for the creditors' committee</p> <p>25 the question was raised again and the issue, which was</p>

Exhibit 42

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

April 29, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 190</p> <p style="text-align: center;">- 190 -</p> <p>1 doing to understand what we were taking on, and to understand 2 how those things were valued. 3 Q. And if you were going to err, you were going to err at 4 least on the asset side towards having a lower value than a 5 higher value, correct? 6 A. As I said earlier, in terms of taking on the assets there 7 was a process which happened, a negotiation process, which I 8 wasn't directly involved in. It was an arm's length process in 9 terms of Barclays and Lehmans negotiating what the fair market 10 value of the assets were. As you say that was a very difficult 11 thing in some cases to work out. But from what I saw it was 12 actually an arm's length, and sometimes acrimonious. It was 13 quite a difficult process agreeing well what is the value of 14 this asset, and what is a fair value. So it wasn't something 15 where we were able just to say, you know, the value is X 16 because that was a low value. There was an arm's length 17 process from what I saw. 18 Q. I guess what you're describing is some kind of a process 19 by which traders from Barclays and traders from Lehmans sat 20 across from each other and tried to come up with valuations, 21 correct? 22 A. Yes, that's precisely what I mean. 23 Q. Is it fair to say that Barclays wasn't bidding up the 24 value of those assets during that week? 25 A. We were trying to get to the market value of those assets,</p>	<p style="text-align: right;">Page 192</p> <p style="text-align: center;">- 192 -</p> <p>1 PMTG group which he ran. 2 Q. And in terms of the assets that Mr. King was responsible 3 for trading you mentioned securitized products and asset-backed 4 products, correct? 5 A. That's correct. 6 Q. And those were the very products that were highly volatile 7 during that particular week, correct? 8 A. Actually, all the markets were highly volatile during that 9 week. But, you're right, those illiquid products were probably 10 falling in value more rapidly than the other markets. 11 Q. And during the course of that week could you briefly 12 describe what was Mr. King's role; what was he doing, what did 13 you observe him doing? 14 A. So the traders -- and as you said, it wasn't just Mr. 15 King, there were various different traders who were specialists 16 in different areas. And what they were doing is they were 17 negotiating with their Lehman counterparts, so the traders on 18 the Lehman side, so the people who spent the time in the 19 markets who understood what the markets were doing, what the 20 current market price was. And I saw Stephen negotiating with 21 his counterparts who were the traders of those products at 22 Lehman. 23 Q. And from time to time during the week would Mr. King, and 24 other traders like Mr. King, report back to you what the 25 results were with of the negotiations with Lehman?</p>
<p style="text-align: right;">Page 191</p> <p style="text-align: center;">- 191 -</p> <p>1 yes. So -- 2 Q. That generally meant bidding down those prices, correct, 3 sir? 4 A. At that -- yes, that's correct. At that time the markets 5 were in freefall, and so we were trying to get the assets to 6 what the current market was. And, you're right, the markets 7 had all been collapsing at that time. 8 Q. And you believed, and Barclays believed, did it not, that 9 Lehman's marks for asset classes were too high, correct? 10 A. Yes. There were traders, as you said, the traders and the 11 heads of the desk were doing that exercise. 12 Q. One of the traders that was doing that exercise was Mr. 13 Keegan, right? 14 A. Yes, that's correct. He's one of them. 15 Q. And Stephen King was another one of them? 16 A. Yes, that's correct. 17 Q. Okay. And, Mr. Stephen King, what's his position at 18 Barclays? 19 A. So Stephen King actually is no longer at Barclays. But at 20 the time Stephen King was a trader who ran some of the 21 securitized products books, so the asset-backed securities. 22 Q. And when you describe the asset-backed securities group is 23 that referred to within Barclays as the PMTG group? 24 A. Yes, it was described. I'm not sure -- back at that point 25 it was. But for quite a long period it was described as the</p>	<p style="text-align: right;">Page 193</p> <p style="text-align: center;">- 193 -</p> <p>1 A. Yes. So some of those traders were coming back to Mr. 2 Ricci and myself with the updates, and where they were in their 3 work. There were areas where they were getting to agreement, 4 there were some areas where they had disagreement. I remember 5 at some point when they got to disagreement we, on both sides, 6 said we're not going to come to agreement, so we took some 7 transactions out of the deal because we said we couldn't agree 8 on the price. 9 Q. Let's just drill down into that a little bit more. So 10 there were assets or types of particular securities where if 11 you couldn't agree with Lehman on a price those were excluded 12 from the transaction, correct? 13 A. Yeah, that's what I remember during that first time. 14 Q. So that's just roughly on the asset side. Let's just talk 15 a little bit about the liability side, and we'll go back over 16 all of this in more detail. 17 So on the asset side, generally you're being conservative, 18 you're not being a cowboy, and Barclays' view, if any, is to 19 put the values down as opposed to pushing them up, correct? 20 A. Just to confirm what I said, it -- we were trying to get 21 to a fair market value. So the market value reflecting that 22 market at that point in time. 23 Q. And on the liability side, similarly, you had to make an 24 educated guess, an assessment of what the assumed liabilities 25 were going to be, correct?</p>

<p style="text-align: right;">Page 218</p> <p style="text-align: center;">- 218 -</p> <p>1 estimate of the cost of 2 billion, we thought there was a 2 further 700 million which was payable to the rest of the Lehman 3 staff, the people we didn't have and hadn't agreed contractual 4 bonuses to. And we didn't know at that time whether the rest 5 of the Lehman staff were going to be paid bonuses or whether, 6 when we looked at the Lehman staff and the Barclays staff, 7 there would be overlap, and we'd have to get rid of them, we'd 8 have to have severance costs for those staff. 9 Q. So that explanation that you just gave us, that's not 10 something you knew on the 16th of September when the schedule 11 came across your desk, correct? 12 A. The -- 13 Q. Correct? 14 A. -- I didn't know what the 700 million -- you're right. So 15 I knew I had an estimate of 2 billion in total. What I knew 16 was the bit which was a fixed liability at that point, was the 17 1.3. What I didn't know was how much of the other 700 18 million -- I didn't know the spread of that 700 million. 19 Q. And in fact, when you looked further into the nature of 20 the comp liability, the assumed liability that was being 21 assumed by Barclays, you realized that, in fact, you would have 22 to account for the full two billion, correct, sir? 23 A. Yes, you're right. So -- 24 Q. And you saw that as a 650 million dollar problem when you 25 noticed that, correct?</p>	<p style="text-align: right;">Page 220</p> <p style="text-align: center;">- 220 -</p> <p>1 Q. And that's the number that then gets reported to the board 2 of directors of Barclays and -- when they're asked to approve 3 this transaction, correct? It's a number just south of 3.7. I 4 think 3 billion is what you reported? 5 A. Yeah. As I said, there were a number of changes to these 6 documents over time. So I think this is a slightly different 7 point in time to when we sent stuff to the board of directors. 8 Q. Well, slightly different was four hours later, correct, 9 sir? 10 A. Yeah. And you had to think of a time scale of when this 11 deal was done. So, you know, this was one o'clock in the 12 morning, having arrived at Lehman's at about middle of the day 13 and done the work. So four hours later was quite a lot of time 14 in the time scale of this deal. The deal was consumed over -- 15 you know, over twenty hours or so -- overnight. 16 Q. If you can turn to Exhibit 6 -- tab 6 in your binder? 17 MR. TAMBE: This document, too, Your Honor, has been 18 admitted into evidence. It has been admitted into evidence. 19 THE COURT: All right, fine. 20 Q. You recognize this cover document -- cover page, as an 21 e-mail from you to James Walker. Do you see that? 22 A. Yes. 23 Q. And who is Mr. Walker? 24 A. Mr. Walker was our CFO of Barclays Capital in the 25 Americas.</p>
<p style="text-align: right;">Page 219</p> <p style="text-align: center;">- 219 -</p> <p>1 A. -- so I think as I said, when I saw this schedule here -- 2 well, sorry, the work we did on this schedule, I thought I was 3 only going to have to accrue 1.3 billion in the acquisition 4 balance sheet. The other 700 million, which I thought I was 5 going to spend, I thought would be charged against my earnings, 6 so going to my profit and loss account in subsequent months. 7 Yes, you're right. Later on, when I saw a document which said 8 that the contractual liability I was taking on per the asset 9 purchase agreement was two billion, what I realized was the 700 10 million, which I thought was going to be charged for future 11 earnings, would actually be a liability I'd have to assume on 12 day one against my acquisition balance sheet. 13 Q. And in fact, that was a big problem for you, because that 14 was 650 million dollars less of negative goodwill -- the result 15 of raising that assumed liability from 1.3 to 2 billion, was it 16 ate into your negative goodwill, correct? 17 A. Yes. So whilst it didn't change the economics, it changed 18 the day-one negative goodwill. 19 Q. And had an impact on your regulatory capital requirements, 20 correct? 21 A. On the day-one requirements, yes. 22 Q. Now, the information that you received from Mr. Romain 23 goes on, then, to list consideration and net assets of 5.2 24 billion and the negative goodwill of 3.7 billion, correct? 25 A. That's correct, yes.</p>	<p style="text-align: right;">Page 221</p> <p style="text-align: center;">- 221 -</p> <p>1 Q. And you are forwarding Mr. Walker the board deck. Do you 2 see that? 3 A. Yes, I see it. 4 Q. And the board deck is the document that is attached to 5 this cover e-mail. Do you see that? 6 A. Yes, that's correct. 7 Q. If you look at the time that your e-mail was sent to Mr. 8 Walker, that was on the 16th at 9:52 Greenwich Mean Time, GMT. 9 Do you see that? 10 A. Yes, I can see that. I think, as I said, I was in New 11 York. So that would have been -- I think it was four hours 12 earlier, so 5:52 in the morning, New York time. 13 Q. And you'd received the other e-mail around 1 or 2 o'clock 14 in the morning? 15 A. That's right. Several hours earlier. 16 Q. All right. So turning to the board deck -- you may need 17 to turn your binder around for that. 18 (Pause) 19 Q. You have the executive summary that appears on page 2. 20 You had reviewed this document before forwarding it, correct? 21 A. Yes. So at the time, yes, I did see this document. 22 Q. Okay. And you had worked with Gary Romain and others in 23 preparing the financial information, the numbers that went into 24 this document? 25 A. Yes, Gary Romain and team would have fed the financial</p>

<p style="text-align: right;">Page 254</p> <p style="text-align: center;">- 254 -</p> <p>1 A. No, the estimates we had -- I think I've told you the 2 estimates we had. We had a 2.25 billion estimate from Lehman 3 and a 1.5 billion estimate from Lehman. I think there's one 4 other number which you may be confusing with that which was, 5 there was some critical day-one contracts. So a subsection of 6 the total supplier contracts were critical day-one contracts 7 which we needed to be in place at the time of the closing. So 8 we said the business would fall over if those weren't in place 9 on day one.</p> <p>10 And I think there was a list which -- of those which was 11 submitted to the Court on Friday which I thought came to about 12 200 million or something less than 200 million. But that -- 13 that list wasn't all of the supplier contracts. It was just 14 the critical day-one contracts we needed to keep the business 15 running over the weekend and into Monday.</p> <p>16 Q. So if I understand all of this testimony then, through the 17 week of the 15th to the 22nd, you don't have an estimate of 18 what you are going to incur in terms of cure liability from the 19 Barclays side. Is that fair?</p> <p>20 A. Is that what I said?</p> <p>21 Q. You haven't done those calculations?</p> <p>22 A. The only estimates we had were the figures we had from 23 Lehman --</p> <p>24 Q. And you had received figures from Lehman and you used 25 those figures, correct?</p>	<p style="text-align: right;">Page 256</p> <p style="text-align: center;">- 256 -</p> <p>1 accounting liability in our day-one acquisition balance sheet. 2 So whatever we paid for cure, I thought, would be a charge 3 which would go through our earnings, subsequent to doing the 4 deal.</p> <p>5 Q. Going back to the attachment to 135. You have an item 6 there, again, for nonfinancial assets of 1.5 billion. Do you 7 see that?</p> <p>8 A. Yes, I can see that.</p> <p>9 Q. And again, as far as you know, that component was never 10 conveyed to the Court, that there was a nonfinancial assets 11 category of 1.5 billion. Is that right?</p> <p>12 A. I think that's -- looks like a subtotal to me, summing the 13 Seventh Avenue building and the data center building -- the one 14 billion for Seventh Avenue and the 500 million for the data 15 centers, summing to 1.5 billion. And I think that amount was 16 conveyed to the Court, was my understanding.</p> <p>17 Q. So the 1.2 billion that you had earlier on for 18 nonfinancial centers that was separate from the Seventh Avenue 19 item, that item had now simply dropped out of your acquisition 20 summary?</p> <p>21 A. Yes. And as I said, I think as we were going through and 22 trying to fine tune things, Gary, who was doing this work, you 23 know, was updating it based on his latest understanding, and 24 his latest understanding was, we shouldn't reflect that number, 25 so he took it out.</p>
<p style="text-align: right;">Page 255</p> <p style="text-align: center;">- 255 -</p> <p>1 A. That is correct.</p> <p>2 Q. And you know those figures were submitted to the Court, 3 correct?</p> <p>4 A. That's -- yes.</p> <p>5 Q. You know that?</p> <p>6 A. Yeah, I was aware.</p> <p>7 Q. And those figures were used as a component for the 8 consideration for this transaction. Do you understand that?</p> <p>9 A. Yeah, I understand in the agreement we took on various 10 assets, we assumed various liabilities, and those were some of 11 the liabilities we assumed, yes. That's correct.</p> <p>12 Q. Did you believe that any part of the 1.5 billion that 13 Lehman was suggesting as an estimate were costs that you 14 actually expected to incur had you made that decision at any 15 point during the week of the 15th through the 22nd?</p> <p>16 A. I think, as I said earlier, we didn't have the ability to 17 make that decision, because we hadn't seen the data, so we 18 hadn't got the data, so we didn't know what we were going to 19 incur and what we weren't going to incur.</p> <p>20 Q. And to the extent you had to record any assumed liability 21 for cure, that would have reduced your negative goodwill, 22 correct?</p> <p>23 A. No -- well, I think at that point, as I said, in terms of 24 the accounting, I didn't think that -- because of the way the 25 documents were written, I didn't think we could recognize any</p>	<p style="text-align: right;">Page 257</p> <p style="text-align: center;">- 257 -</p> <p>1 Q. And that, too, had an impact on your negative goodwill 2 calculation, correct?</p> <p>3 A. Well, the negative goodwill is a balance of the assets and 4 liabilities, yes. So anything which goes into that will have 5 an effect on the balance.</p> <p>6 Q. Now, earlier we had this discussion about the comp accrual 7 and the bonus payment. And if you can turn to Exhibit 24 in 8 your binder. That's an e-mail --</p> <p>9 MR. TAMBE: This is admitted in evidence, Your Honor.</p> <p>10 Q. This is an e-mail exchange between you and Michael Evans, 11 Rich Ricci. Do you see that?</p> <p>12 A. That's correct, yes.</p> <p>13 Q. All right. And this is in the middle of the week, 14 Wednesday, September 17th. Do you see that?</p> <p>15 A. Yes, I can see that.</p> <p>16 Q. And you title your e-mail "650 million dollar problem"?</p> <p>17 A. That's correct, yes.</p> <p>18 Q. Because you have now discovered, in the course of your 19 work, that as opposed to 1.35 you're going to have to record 20 2.0 billion on your first-day acquisition balance sheet, 21 correct?</p> <p>22 A. So --</p> <p>23 Q. Is that right?</p> <p>24 A. -- so -- that is correct. But let me just explain that so 25 we're clear.</p>

<p style="text-align: right;">Page 258</p> <p style="text-align: center;">- 258 -</p> <p>1 Q. I think you've explained it a couple of times already.</p> <p>2 A. Well, I just wanted to reiterate it, just to make sure</p> <p>3 there wasn't any confusion.</p> <p>4 Q. I don't think there is any confusion.</p> <p>5 A. So we had -- I thought we had an estimated two billion</p> <p>6 total liability we were going to take on. Some of that two</p> <p>7 billion, we had a name-by-name list of what we were paying</p> <p>8 people, which I thought I had to reflect in my opening balance</p> <p>9 sheet on day one. There was some of it, about 650, where we</p> <p>10 didn't have a name-by-name list, which I thought was going to</p> <p>11 be bonus for the other people or severance for the other</p> <p>12 people, if there ended up being people we didn't need. I</p> <p>13 thought that 650 million, which would get charged against our</p> <p>14 earnings but not against our day-one, so it wouldn't be part of</p> <p>15 our negative goodwill calculation.</p> <p>16 Now, when I read the documents here, and the documents</p> <p>17 cross-referred to another document which said the amount was</p> <p>18 two billion, it appeared that we had a contractual liability</p> <p>19 for two billion in total, which meant I had to show the whole</p> <p>20 two billion on my acquisition balance sheet. So though the</p> <p>21 amount I was going to pay wouldn't change, what happened is</p> <p>22 that was going to go into my acquisition balance sheet, so it</p> <p>23 would reduce my negative goodwill. So I have a lower charge</p> <p>24 for earnings, but I'd have lower negative goodwill. And my</p> <p>25 negative goodwill would fall by 650 million, which is the</p>	<p style="text-align: right;">Page 260</p> <p style="text-align: center;">- 260 -</p> <p>1 A. Yes, I can see that.</p> <p>2 Q. Did you have any discussions with Mr. Ricci as to</p> <p>3 whether -- as to the fact that it had never been agreed to --</p> <p>4 the clause that you were pointing out had never been agreed to?</p> <p>5 A. Yes, I did have discussions with Mr. Ricci, and I had</p> <p>6 discussions with Archie Cox as well to try and work out, you</p> <p>7 know, how this clause had got into the document.</p> <p>8 Q. Right. Because you were trying real hard not to have to</p> <p>9 report the 2.0 as assumed liabilities in your acquisition</p> <p>10 balance sheet. You needed the 650 million of negative</p> <p>11 goodwill, correct?</p> <p>12 A. Yes. So, as I said earlier, I thought, in my acquisition</p> <p>13 balance sheet, I was assuming we had 1.35 of contractual</p> <p>14 bonuses would be a charge, and 650 would cover the other</p> <p>15 bonuses and the severance costs for the other staff, so, yeah.</p> <p>16 So this was different from my understanding.</p> <p>17 Q. And that was about the terms of what you recorded on your</p> <p>18 acquisition balance sheet, you recorded 1.55, correct?</p> <p>19 A. No, we ended up recording two billion or very close to two</p> <p>20 billion on our acquisition balance sheet, was our final</p> <p>21 position.</p> <p>22 Q. Because you included in that not just bonus, but also</p> <p>23 severance, correct?</p> <p>24 A. Yeah. So we included the bonus and the severance of the</p> <p>25 relevant staff.</p>
<p style="text-align: right;">Page 259</p> <p style="text-align: center;">- 259 -</p> <p>1 problem which I mentioned here.</p> <p>2 Q. In your e-mail to Michael Evans and Rich Ricci, you say,</p> <p>3 "I was relying on you guys telling me I needed 1.35 billion,</p> <p>4 which gave me the 650 million off the goodwill." Do you see</p> <p>5 that?</p> <p>6 A. Yes, I can see that.</p> <p>7 Q. And in fact, had Mr. Ricci told you that you needed only</p> <p>8 the 1.35 billion, which helped you calculate the 650 million --</p> <p>9 A. Yes, I --</p> <p>10 Q. -- off the goodwill?</p> <p>11 A. -- I think -- I think I probably got that from Rich Ricci,</p> <p>12 who would have got the data from Michael Evans, who, as I said</p> <p>13 earlier, was working with the Lehman HR department to work out</p> <p>14 what the contractual bonuses were going to be.</p> <p>15 Q. And you see the response from Mr. Ricci further up in that</p> <p>16 e-mail to you, where in fact he tells you, "Never agreed to</p> <p>17 it." Do you see that?</p> <p>18 A. That's true, yes.</p> <p>19 Q. All right. And he says, "Never agreed to it. Archie,</p> <p>20 this is the problem." He's referring to Archie Cox, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And who's Archie Cox?</p> <p>23 A. Archie Cox was one of our negotiators.</p> <p>24 Q. And Rich Ricci, at that point says, "We can't have this</p> <p>25 clause, I don't think." Do you see that?</p>	<p style="text-align: right;">Page 261</p> <p style="text-align: center;">- 261 -</p> <p>1 Q. As you go through the week, and the transaction moves from</p> <p>2 Lehman 2 to Lehman 3, what is your understanding of what</p> <p>3 resulted in that transaction moving from the formulation that</p> <p>4 it had at the beginning of the week, the Lehman 2 formulation,</p> <p>5 to ultimately what got transacted at the end of the week?</p> <p>6 A. I think, as I said earlier, my understanding was the risk</p> <p>7 of the transaction had dramatically increased, and for two</p> <p>8 different reasons. One, we had had an offsetting for the long</p> <p>9 and short positions we were taking on. And that was no longer</p> <p>10 the case. We now just had some naked long positions, so we had</p> <p>11 a huge long inventory position. And the second reason was,</p> <p>12 beforehand we'd been able to do some due diligence, have</p> <p>13 negotiations, understanding what the assets were, knowing that</p> <p>14 we had the fair market values. Some of the assets in the later</p> <p>15 transaction, we hadn't seen before, so we hadn't been able to</p> <p>16 work out what the fair value of those assets was.</p> <p>17 Q. You learned towards the end of the week, the 19th --</p> <p>18 Friday the 19th in particular, that the traders at Barclays had</p> <p>19 done an analysis of the assets that had come over as part of</p> <p>20 the Fed repo, correct?</p> <p>21 A. It was completely hectic around that time. So I know they</p> <p>22 were getting some information, they were trying to do some</p> <p>23 work. I -- my recollection is that they hadn't got everything</p> <p>24 by that time. But I know they were -- they were running</p> <p>25 around, I mean, there were -- I can't remember exactly, but I</p>

Exhibit 43

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

April 30, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 86</p> <p style="text-align: center;">- 86 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 Q. Others have objected to my questions from time to time, 2 and you should feel free to do that too. If we look at the 3 first line of that e-mail to Bill, you said here, Mr. Clackson, 4 it's a Long Island side, LI side, not BarCap, in terms of where 5 this information comes from; do you see that? 6 A. Yes, that's correct. I -- sorry. Yes, I can see that. 7 Q. So you're relying on their estimate at that point, as 8 you've mentioned? 9 A. Yes. 10 Q. And now you have this accounting liability issue. You've 11 taken the cure, as I think you explained to the Court 12 yesterday, the 2.25, completely off the acquisition balance 13 sheet and over in the direction of your profit and loss to be 14 charged as these contracts are assumed and paid. Is that 15 right? 16 A. Yeah. So that was my understanding at the time that, as 17 we did the work on cure and worked out the payments we'd have 18 to make, those would be charged against our accounting results 19 subsequent to the acquisition. 20 Q. And the 1.35, once again for me and for His Honor, what 21 does that refer to in terms of the comp? What are you moving 22 off of the acquisition balance sheet in terms of comp and over 23 toward your profit and loss statement? 24 A. So the estimate we had for comp there was the number 2 in 25 that formula. So I think we had an estimate that we were going</p>	<p style="text-align: right;">Page 88</p> <p style="text-align: center;">- 88 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 says -- this is Lehman's balance sheet and it gives the final 2 asset split. And this is what Mr. Clackson writes, referring 3 to this e-mail: 4 "Negative goodwill from this method is the sum of 2.25 5 plus 2, which comes to 4.25, minus 1.35. That's the amount 6 Barclays is planning to spend." 7 Is that accurate, sir? 8 Q. No, I think this is a misreading of the document, because 9 1.35, I think as I've just said, isn't the amount we plan to 10 spend; 1.35 was the accounting liability which we thought we 11 would have to reflect in our opening balance sheet. And as I 12 said earlier, we didn't know how much we were going to spend in 13 terms of a cure. 14 Q. Let me show you Movants' 2, if I may. You were -- had 15 been asked about that. 16 MR. SCHILLER: That is in evidence, as you know, Your 17 Honor. 18 Q. Now, if you look at the cure payment set forth on this 19 piece of paper there, and you say -- this isn't your balance 20 sheet, but what you've described from your U.K. accounting -- 21 A. Sorry. What's the date of -- 22 Q. This is -- 23 A. I -- 24 Q. -- 9/16/08, handwritten at the top of the page. Do you 25 see that?</p>
<p style="text-align: right;">Page 87</p> <p style="text-align: center;">- 87 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 to pay two billion dollars. And in terms of what accounting 2 liability we'd reflect in the opening balance sheet or the 3 completion balance sheet, at the time we thought we would only 4 reflect accounting liability for bonuses, where we had a name- 5 by-name list of the bonuses we were going to guarantee to 6 individuals. 7 So of that two billion, the 1.35 was the amount where I 8 thought we had a name-by-name list. The balance, the 650 9 million dollars balance, I think as I said yesterday, was money 10 which we're expected to spend for the other individuals who 11 were taking on the other of the 10,000 people we were taking 12 on. We didn't know how many of those we would keep or whether 13 they would go, and so we didn't know whether that conversation 14 on liability related to bonus or severance. 15 Q. If this Court were told that that 1.35 number is the 16 amount that Barclays is planning to spend on comp and cure, 17 would that have been accurate? 18 A. No. That wasn't my understanding at the time. As I said, 19 the 1.35 is a subset of the amounts which were guaranteed. I 20 didn't have any better data from my human resources people 21 other than the two billion dollar estimate at that time. 22 MR. SCHILLER: May we look at the April 9 transcript 23 at page 35, lines 6 through 10, please? 24 Q. Mr. Clackson, please look with me at this section of the 25 transcript. It refers to what the Court has been told, and it</p>	<p style="text-align: right;">Page 89</p> <p style="text-align: center;">- 89 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 A. Okay, yes, I could see that. 2 Q. And I'm pointing down to the 2.25 number on cure that 3 appears on this document, and it is in a balance sheet setting 4 of assets and liabilities in the transaction, some of them. 5 And there's, here, the 2.25 number that you've been testifying 6 about. And if you were to move that number from your 7 acquisition balance sheet to a profit and loss accounting, it 8 would not be part of an asset and liabilities comparison. 9 Correct? 10 A. Yes, that's correct. So if it was charged through our 11 profit and loss statement, it means we wouldn't on day one have 12 to recognize a liability. So we're saying on day one we 13 wouldn't recognize a liability, but we would recognize a 14 liability as we settled with the customers. And at the time 15 you recognize a liability, there would be a charge which would 16 go through our profit and loss account. So that was our 17 understanding of how we would treat that. 18 Q. And in terms of the comp number, which appears there as 19 two billion, you explained to the Court that a portion of that 20 would also be moved off your acquisition balance sheet at that 21 point in the transaction. Also on a charged basis under P&L? 22 A. Yes, so we thought, because we didn't have at the time, 23 you know, a detailed list of either the -- for the 650 million, 24 we didn't think it would appear as a liability because we 25 didn't know who would end up getting severance or who would end</p>

<p style="text-align: right;">Page 90</p> <p style="text-align: center;">- 90 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 up getting bonus or how much. We didn't think that we could</p> <p>2 show that as a liability on day one.</p> <p>3 And so we would have to accrue those charges either as</p> <p>4 they arose or, you know, during the relevant period for the</p> <p>5 rest of the year. That was our understanding.</p> <p>6 Q. And so if 650 or 700 million were also taken off this</p> <p>7 sheet of paper as it was for you on your acquisition balance</p> <p>8 sheet, how would the total financial assets compare to the</p> <p>9 total financial liabilities?</p> <p>10 A. So the assets would obviously exceed, in this case for</p> <p>11 liabilities, by the amount you took off. So if you took off</p> <p>12 2.25 and 650, there would be -- the assets would be 2.9 billion</p> <p>13 greater from the liabilities, which means, for accounting</p> <p>14 purposes, on that day one acquisition balance sheet you would</p> <p>15 realize a negative goodwill gain, which is effectively what my</p> <p>16 earlier e-mail described.</p> <p>17 Q. And that would be an acquisition accounting gain based on</p> <p>18 the numbers you've just described, a buffer between the assets</p> <p>19 and the liabilities as one basis for that?</p> <p>20 MR. SCHILLER: I withdraw the question.</p> <p>21 THE WITNESS: Yeah.</p> <p>22 Q. The -- in terms of the two billion dollar comp liability,</p> <p>23 Mr. Clackson, I want to be clear. I'd like the Court to</p> <p>24 understand your view as to what comprised that two billion at</p> <p>25 the time this transaction closed. Did that mean to you two</p>	<p style="text-align: right;">Page 92</p> <p style="text-align: center;">- 92 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 about what he knows about comp and cure. That's it.</p> <p>2 MR. SCHILLER: Thank you, Judge. And he has testified</p> <p>3 as to that, so I'm not going to go over that again with him.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. SCHILLER: I think it's important, at least it is</p> <p>6 to us, that the trier of fact see what has been alleged</p> <p>7 compared to what his evidence is, and I tried to dramatize that</p> <p>8 for you. I won't do that again, Judge.</p> <p>9 THE COURT: No, it's okay. You can be as dramatic as</p> <p>10 you like.</p> <p>11 BY MR. SCHILLER:</p> <p>12 Q. I'd like to return to Exhibit 110.</p> <p>13 MR. SCHILLER: And I have to distribute that, with the</p> <p>14 Court's permission. May I approach?</p> <p>15 THE COURT: Sure.</p> <p>16 (Pause)</p> <p>17 MR. SCHILLER: Your Honor, this is an unobjected to</p> <p>18 exhibit of a Barclays public announcement on the 17th of</p> <p>19 September, 2008.</p> <p>20 Q. Do you see that --</p> <p>21 A. Yes, I --</p> <p>22 Q. -- Mr. Clackson?</p> <p>23 A. -- see that.</p> <p>24 Q. And it references John Varley and his address. Can you</p> <p>25 describe to the Court, if you recall, what Mr. Varley was</p>
<p style="text-align: right;">Page 91</p> <p style="text-align: center;">- 91 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 billion in bonuses, or were there other elements to the two</p> <p>2 billion dollars?</p> <p>3 A. My understanding was we were taking on compensation</p> <p>4 liabilities for the 10,000 or so employees we're taking on. A</p> <p>5 portion of that, as I've said before, comprised bonuses which</p> <p>6 have been fixed. There was a portion where we didn't know</p> <p>7 whether people would receive severance payments or bonuses, and</p> <p>8 therefore my understanding was that included both bonus,</p> <p>9 severances and any related payroll taxes on those amounts.</p> <p>10 Q. So if the Court were told -- Mr. Clackson, if His Honor</p> <p>11 was told by movants that Barclays had signed and realized that</p> <p>12 it expressly mandatorily makes Barclays responsible to pay two</p> <p>13 billion for bonuses, would that be complete or incomplete?</p> <p>14 MR. TAMBE: Objection, Your Honor. It calls in part</p> <p>15 for legal -- for a legal conclusion, because he's being asked</p> <p>16 to compare that representation with what the contract may or</p> <p>17 may not require Barclays to do. I don't think he's competent</p> <p>18 to testify to that.</p> <p>19 THE COURT: I'm going to sustain the objection for the</p> <p>20 reasons stated and for another reason, because it's a question</p> <p>21 that ties into a hypothetical representation to the Court. If</p> <p>22 you ask it as a purely factual matter without the reference to</p> <p>23 the representation, I think it's a better question. And I also</p> <p>24 think that this witness is not in a position in terms of</p> <p>25 representations to the Court. He's only in a position to talk</p>	<p style="text-align: right;">Page 93</p> <p style="text-align: center;">- 93 -</p> <p style="text-align: center;">LEHMAN BROTHERS HOLDINGS INC., et al.</p> <p>1 describing that morning and generally to whom?</p> <p>2 A. Mr. --</p> <p>3 MR. TAMBE: Your Honor, I'm not sure foundation was</p> <p>4 laid as to this witness' knowledge about this presentation.</p> <p>5 Q. Are you familiar with this announcement in Exhibit 110,</p> <p>6 Mr. Varley (sic).</p> <p>7 MR. TAMBE: Mr. Clackson.</p> <p>8 MR. SCHILLER: Mr. Clackson, yeah.</p> <p>9 THE COURT: I'm not familiar with it at all. I'm</p> <p>10 about to be. If there's a foundation objection, the foundation</p> <p>11 objection is granted. Lay your foundation and we'll proceed.</p> <p>12 MR. SCHILLER: Okay. Thank you, Judge. I'm sorry.</p> <p>13 Didn't mean to interrupt.</p> <p>14 A. Yes. No --</p> <p>15 Q. Did you contribute any data to Mr. Varley's remarks that</p> <p>16 day?</p> <p>17 A. Yeah, we would have -- my team and myself contributed all</p> <p>18 the financial data which went into his announcement to the</p> <p>19 market.</p> <p>20 Q. May I ask you to turn to the second page of Mr. Varley's</p> <p>21 announcement to the market on September 17th, two days before</p> <p>22 the hearing before His Honor? And turn to the third paragraph,</p> <p>23 the second sentence, in which Mr. Varley says "We are acquiring</p> <p>24 trading assets with a current value estimated" -- "a current</p> <p>25 estimated value of seventy-two billion dollars and trading</p>

Exhibit 44

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

May 6, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 106</p> <p style="text-align: center;">- 106 -</p> <p>1 of the corporates, they've lost three to five percent of their 2 pass-throughs. I've now learned my understanding may be 3 mistaken. But at the time I believe that's what I was writing. 4 He was trying to give me comfort that in fact they cut 5 a deal on the Lehman name, that we could actually use the 6 Lehman name in foreign jurisdictions, as I -- for two years, in 7 order to have the ability to liquidate. Again, my focus was, 8 what were the issues that would affect me -- me -- the estate 9 and my ability to maximize value for the estate going forward? 10 And he was pointing out that there was a deal vis-a-vis the 11 Lehman name. 12 I don't remember what "contract" stands for. It could 13 be a number of things. I just don't remember. Your Honor, I 14 can guess, if you like, but I don't honestly fully remember. 15 There were a number of issues relating to contracts that would 16 not directly relate to the contracts in cure that Barclays was 17 taking. 18 And here was an important comment that, you know, no 19 resis. If you remember, in the asset purchase agreement, there 20 was this idea that Barclays was getting fifty percent of the 21 resis, we were getting fifty -- we were keeping fifty percent. 22 Now, he was telling me that no residential mortgages, I believe 23 he was saying, were being retained; that we need to include 24 residential mortgages to Barclays because of the loss of assets 25 and the deterioration of the market value of those assets, to</p>	<p style="text-align: right;">Page 108</p> <p style="text-align: center;">- 108 -</p> <p>1 to the end. What was filed on Wednesday, what has changed? I 2 don't want to hear about any interim things. I just want to 3 know what is different from what you told the judge, not from 4 where you thought you were going to be etcetera. I turned the 5 page, and at this point it was getting late. I had the 6 committee on hold, and I said to him, I just need to know where 7 we stand. We turned the page -- I turned the page, and I think 8 Mark Shapiro was on the phone at the time, I can't swear to 9 that, but Jim took a deep breath and said fine. 10 He had 72 billion dollars of assets and 68 billion of 11 liabilities as of what we told the judge, the way it was in the 12 contract. That's no longer true. We now have 47.4 billion of 13 assets and 45.5 billion of liabilities. These liabilities are 14 no longer third-party liabilities or shorts or derivatives. 15 These are now essentially money we owe Barclays. So we have a 16 net difference of assets to liabilities of 2.4 billion, in my 17 mind, matching up -- you know, all talking book value of 18 assets. The cure, it was 2.25 billion, it's now 2.25 billion. 19 I now know he misspoke. As Ms. Fife made clear to the Court, 20 it was really 1.75 or something like that, but it was -- you 21 know, he told me nothing had changed. Employee comp and 22 severance, no change, 2 billion, 2 billion. Goodwill, no 23 change, 250-250. 24 You can see, the center column are the issues I cared 25 about, that I wanted him to tell me what changed. 745 Seventh</p>
<p style="text-align: right;">Page 107</p> <p style="text-align: center;">- 107 -</p> <p>1 make them comfortable they were getting the balanced benefit of 2 the bargain transaction -- 3 Q. What -- 4 A. -- as I said -- I'm sorry? 5 Q. -- I'm just saying, what's the -- the handwriting is 6 hard -- the two words on the right, starts with a "P", 7 underneath that line, that curve? 8 A. I believe what it says is "position movement." The 9 positions are moving around and changing. He then said to me, 10 hey, we have 47.4 billion of assets against 45.5 billion of 11 liabilities, plus the cure and the employees is roughly 4 12 billion. So, you know, the estate is 2 billion dollars ahead. 13 I frankly, at this point, was thoroughly confused in a sense of 14 I wasn't sure, you know, the 20 to 30 billion, where it came 15 from; how the 47 just matched up with the 45.5 longs; and how 16 the resis fit in. And I'm not proud of this, but I was -- I 17 did get a little annoyed. And I did say to him, you know 18 something, you're talking to me -- you know, as if I know 19 what's going on in your head, as if what deal you thought was 20 happening this morning and how it changed from last night. I 21 know what you told us last night. I know what the deal was 22 Wednesday and where we were Thursday. Can you just give it to 23 me simple? 24 And I turned the page and a little aggressively, he might 25 say -- obnoxiously said, just start from the beginning and go</p>	<p style="text-align: right;">Page 109</p> <p style="text-align: center;">- 109 -</p> <p>1 Avenue which was, you know, the headquarter building in Times 2 Square, essentially no change. New Jersey data, we thought it 3 was 450 -- I didn't write down the number, I don't know why. I 4 was probably writing the rest of my list of what I wanted to 5 ask him next, but we know it was 100 million change. Profit 6 sharing -- that was my shorthand for purchase price adjustment, 7 we talked about earlier. Yes, it was in the prior deal; no, 8 it's not in the current deal. 9 DTC settlements -- this is some of the confusion from the 10 prior page. Before, Barclays was not helping us -- was not 11 guaranteeing or providing funds in order to allow for -- again, 12 this is my understanding -- that to the extent that customers 13 had trades within the broker dealer that had not closed prior 14 to our closing, DTC had raised issues regarding who was going 15 to guarantee those trades. And in business shorthand, Barclays 16 was not stepping to the plate or providing any comfort in the 17 old deal, now they were stepping up and solving that issue. I 18 found out later about negotiations around that issue, but as of 19 that afternoon, all I know is yes, Barclays was assuming the 20 liability or solving that issue. 21 Purchased assets. Were they taking more? Were they 22 grabbing more? Do I have to worry about the integrity of the 23 estate going forward? No, no, no. The PIM business, which 24 relates to those brokers, is in LB -- I honestly don't even 25 know what this is -- student -- I don't know, or LB Canada --</p>

Exhibit 45

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

May 7, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p>Page 122</p> <p>- 122 -</p> <p>1 remaining estates.</p> <p>2 Q. Okay.</p> <p>3 MR. KIRPALANI: Nothing further, Your Honor.</p> <p>4 THE COURT: Is there anything more from anyone else?</p> <p>5 MR. BOIES: Just two questions, Your Honor to follow-</p> <p>6 up.</p> <p>7 RE-CROSS-EXAMINATION</p> <p>8 BY MR. BOIES:</p> <p>9 Q. Mr. Burian, counsel just asked you about Movants' Exhibit</p> <p>10 394, and he introduced the line of questioning saying that I</p> <p>11 had talked to you about book value. And he asked you to look</p> <p>12 at the pages. And he said do you see liquidation value</p> <p>13 mentioned anywhere; do you recall those questions?</p> <p>14 A. I do.</p> <p>15 Q. You don't see book value mentioned on those pages, do you,</p> <p>16 sir?</p> <p>17 A. No, it was --</p> <p>18 Q. Okay.</p> <p>19 A. -- market value.</p> <p>20 Q. And he said you considered or you told him that you</p> <p>21 considered suing under the TAA, do you recall that?</p> <p>22 A. The TSA, sir.</p> <p>23 Q. TSA. You didn't sue under the TSA, did you?</p> <p>24 A. By the way, sue, just 'cause I know you're not a</p> <p>25 bankruptcy person, what we were talking about the time, was</p>	<p>Page 124</p> <p>- 124 -</p> <p>1 think counsel has clarified it, I just want to be clear that</p> <p>2 the testimony he had given before about when he considered</p> <p>3 suing Barclays wasn't related to this TSA issue; it was related</p> <p>4 to the substance of what we're talking about here. That was</p> <p>5 the only point I wanted to bring -- I wanted to clarify. And I</p> <p>6 think counsel has agreed to that.</p> <p>7 THE COURT: So does that end the examination?</p> <p>8 MR. BOIES: Yes, Your Honor.</p> <p>9 THE COURT: Mr. Burian, you're excused.</p> <p>10 THE WITNESS: Thank you very much, Your Honor.</p> <p>11 THE COURT: I'm sure you're very pleased to hear those</p> <p>12 words.</p> <p>13 THE WITNESS: Yes, sir.</p> <p>14 THE COURT: And we'll call the next witness.</p> <p>15 MR. GAFFEY: Your Honor, may I approach with the</p> <p>16 witness?</p> <p>17 THE COURT: Yes.</p> <p>18 MR. RICCI: Thank you.</p> <p>19 THE COURT: Mr. Ricci, I'm going to swear you in once</p> <p>20 people have settled down.</p> <p>21 MR. RICCI: Should I remain standing, Your Honor?</p> <p>22 THE COURT: You might as well stand, you're going to</p> <p>23 be sitting for a long time.</p> <p>24 (Pause)</p> <p>25 THE COURT: You ready?</p>
<p>Page 123</p> <p>- 123 -</p> <p>1 coming to court to compel compliance, not -- you know, motion</p> <p>2 practice, not suing someone.</p> <p>3 Q. Did you do that?</p> <p>4 A. We -- no, we didn't.</p> <p>5 Q. Okay. When was the first time you considered Barclays --</p> <p>6 when you considered suing Barclays in connection with anything</p> <p>7 to do with the APA, including the clarification letter, that</p> <p>8 transaction?</p> <p>9 A. Are you including -- the TSA was part of the APA, sir.</p> <p>10 Are you including the TSA or not including it?</p> <p>11 Q. I'm not talking about going to court because you thought</p> <p>12 they weren't cooperating; I'm talking about going to Court</p> <p>13 because you thought that somehow the transaction was not the</p> <p>14 transaction that you thought had occurred.</p> <p>15 MR. KIRPALANI: Objection.</p> <p>16 Q. The thing that brings us here today.</p> <p>17 A. Right.</p> <p>18 MR. KIRPALANI: I have an objection, Your Honor.</p> <p>19 THE COURT: What's the objection?</p> <p>20 MR. KIRPALANI: The objection is this is beyond the</p> <p>21 scope of my redirect and was extensively covered in his cross-</p> <p>22 examination.</p> <p>23 THE COURT: I think that's true. I think we've been</p> <p>24 down this road a few times.</p> <p>25 MR. BOIES: The only thing I wanted to be clear, and I</p>	<p>Page 125</p> <p>- 125 -</p> <p>1 MR. GAFFEY: Yes, Your Honor.</p> <p>2 THE COURT: Mr. Ricci, please raise your right hand.</p> <p>3 (Witness duly sworn)</p> <p>4 THE COURT: Be seated, please.</p> <p>5 MR. GAFFEY: May I proceed, Your Honor?</p> <p>6 THE COURT: Please do.</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MR. GAFFEY:</p> <p>9 Q. Good afternoon, Mr. Ricci.</p> <p>10 A. Good afternoon.</p> <p>11 Q. We've not met. My name is Robert Gaffey, and I'm from</p> <p>12 Jones Day. We're counsel to the debtors.</p> <p>13 A. How do you do, Mr. Gaffey?</p> <p>14 Q. Mr. Ricci, by whom are you employed, sir?</p> <p>15 A. Barclays Bank.</p> <p>16 Q. How long have you been employed by Barclays Bank?</p> <p>17 A. Over fifteen years.</p> <p>18 Q. And as I understand it, sir, you're currently the chief</p> <p>19 operating officer of the investment banking and management</p> <p>20 division of Barclays Capital?</p> <p>21 A. I've got a different title now since we last met.</p> <p>22 Q. Okay.</p> <p>23 A. I'm the co-chief executive of the corporate investment</p> <p>24 bank.</p> <p>25 Q. You were employed by Barclays Capital in September of</p>

<p style="text-align: right;">Page 126</p> <p style="text-align: center;">- 126 -</p> <p>1 2008, correct, sir?</p> <p>2 A. Yes, that's correct.</p> <p>3 Q. What was your title then?</p> <p>4 A. I was the COO of the corporate investment bank.</p> <p>5 Q. And briefly, sir, what were your responsibilities as COO?</p> <p>6 A. As COO my day-to-day responsibilities involved managing</p> <p>7 all of the infrastructure functions. So risk, legal</p> <p>8 compliance, technology, human resources, as well as serving on</p> <p>9 the executive committee of the -- of Barclays Capital.</p> <p>10 Q. And at that time, sir, you reported to Robert Diamond?</p> <p>11 A. That's correct.</p> <p>12 Q. And Robert Diamond was at the time, and is, president of</p> <p>13 Barclays Capital, is that right?</p> <p>14 A. That is correct.</p> <p>15 Q. Thank you. And were you a direct report to Mr. Diamond?</p> <p>16 A. Yes.</p> <p>17 Q. And did you work, sir, with a man named Mr. Clackson?</p> <p>18 A. Yes.</p> <p>19 Q. What was the reporting relationship vis-a-vis Mr.</p> <p>20 Clackson. Was he next to you, a report to you, where did he</p> <p>21 fit in the organization chart?</p> <p>22 A. Mr. Clackson reported to me.</p> <p>23 Q. Okay. Now, sir, you understand obviously that what's</p> <p>24 brought us here today is the sale transaction that took place</p> <p>25 in September of 2008. I want to ask you first about a brief</p>	<p style="text-align: right;">Page 128</p> <p style="text-align: center;">- 128 -</p> <p>1 Q. On the Sunday. And in the course of the work from</p> <p>2 Thursday the 12th through Sunday the 15th, did you have a team</p> <p>3 of Barclays people working with you in connection with the</p> <p>4 negotiations?</p> <p>5 A. We had a team of Barclays people as well as lawyers and</p> <p>6 advisors, as well.</p> <p>7 Q. And the lawyers and the advisors and the Barclays people</p> <p>8 were able to do some degree of due diligence, albeit on a</p> <p>9 somewhat hurried schedule, is that right?</p> <p>10 A. It was a very limited amount of due diligence, yes.</p> <p>11 Q. But included in the due diligence that Barclays was able</p> <p>12 to do, sir, was some review of values of various classes of</p> <p>13 securities held by Lehman, is that correct?</p> <p>14 A. Amongst other assets, yes. Limited, though. I would</p> <p>15 emphasis on limited.</p> <p>16 Q. And in the course of that work -- and, again, I'm in the</p> <p>17 prebankruptcy period, Mr. Ricci, in the course of that due</p> <p>18 diligence, and other work around those negotiations, did you</p> <p>19 have occasion to work with a man named Martin Kelly?</p> <p>20 A. I don't believe I directly worked with Martin Kelly during</p> <p>21 that weekend, no.</p> <p>22 Q. Who were the main Lehman people you worked with in that</p> <p>23 prebankruptcy period?</p> <p>24 A. I would have spent most of my time with Mr. McDade. Mr.</p> <p>25 Kirk, I spent some time with Mr. Fuld. Really at that level of</p>
<p style="text-align: right;">Page 127</p> <p style="text-align: center;">- 127 -</p> <p>1 period before the filing of the Lehman bankruptcy, when I</p> <p>2 understand there were discussions between Barclays on the one</p> <p>3 hand and Lehman on the other about the purchase of the entire</p> <p>4 Lehman firm. Do you recall those few days?</p> <p>5 A. Yes.</p> <p>6 Q. And were you involved in those negotiations?</p> <p>7 A. Yes.</p> <p>8 Q. In fact, you were appointed by Mr. Diamond, essentially,</p> <p>9 as the lead negotiator on those negotiations, is that right?</p> <p>10 A. I was appointed by Mr. Diamond as the -- the head of the</p> <p>11 whole transaction. So part of my responsibilities were those</p> <p>12 negotiations, yes.</p> <p>13 Q. And you were more or less teed up to be the senior person</p> <p>14 to lead the discussions on the Barclays side, correct?</p> <p>15 A. That's correct. I had a large team working with me, but</p> <p>16 that's correct, I was a senior person.</p> <p>17 Q. And those negotiations with regard to a potential purchase</p> <p>18 of the entire Lehman firm took place for several days beginning</p> <p>19 on or about September 12th, the Thursday, is that correct?</p> <p>20 A. That's correct, I believe. Yes.</p> <p>21 Q. And that deal did not come to fruition, as I understand</p> <p>22 it, is that right?</p> <p>23 A. That deal did not happen. That is correct.</p> <p>24 Q. And that deal died on the Saturday?</p> <p>25 A. On the Sunday.</p>	<p style="text-align: right;">Page 129</p> <p style="text-align: center;">- 129 -</p> <p>1 the house, top of the house.</p> <p>2 Q. And in connection with those prebankruptcy discussions</p> <p>3 between Barclays and Lehman, your team included Jerry del</p> <p>4 Missier, correct?</p> <p>5 A. That is correct, yes.</p> <p>6 Q. And Mike Keegan, correct?</p> <p>7 A. Mike Keegan.</p> <p>8 Q. And what was Mike Keegan's role?</p> <p>9 A. Mike Keegan was playing a -- a variety of roles. He did</p> <p>10 work on the asset valuations of some of the securities and some</p> <p>11 of the other assets.</p> <p>12 Q. And did Mr. Keegan report up to you?</p> <p>13 A. He reports to Mr. Del Missier directly. On the project,</p> <p>14 we had a whole team of people, but reporting to me.</p> <p>15 Q. And Mr. Stephen King was on the team, as well?</p> <p>16 A. I don't recall if Stephen was on the team that weekend.</p> <p>17 He --</p> <p>18 Q. I could jump ahead a bit, because you know we're going to</p> <p>19 talk about after the bankruptcy too, but he was involved in the</p> <p>20 postbankruptcy negotiations, correct?</p> <p>21 A. That is correct, yes.</p> <p>22 Q. And what was Mr. Keegan's general area of responsibility?</p> <p>23 A. Mr. Keegan?</p> <p>24 Q. Yes.</p> <p>25 A. Mr. Keegan's general area of responsibility were valuing</p>

<p style="text-align: right;">Page 146</p> <p style="text-align: center;">- 146 -</p> <p>1 Q. I'd like you to focus in terms of conversations with Mr. 2 Diamond on the period Monday the 15th through Tuesday the 16th. 3 It's a fact, sir, is it not, that early in the morning on the 4 16th of September an agreement was reached, an agreement in 5 principle was reached? We'll talk about changes to that deal 6 over the week, but on the Tuesday morning a deal was reached. 7 Is that right? 8 A. We had an agreement in principle on a deal structure, yes. 9 Q. Okay, and did you have a conversation with Mr. Diamond 10 before you agreed, in principle, to that deal structure? 11 A. I don't recall. I really don't recall having a 12 conversation with Mr. Diamond. It was, again, lots of moving 13 parts, fast and furious, up all night type of thing. 14 Q. When you described the deal structure to Mr. Diamond did 15 you discuss with him whether or not it was capital accretive? 16 A. Yes, as we were preparing for an investment announcement 17 on the Wednesday to the public, you know, certainly my 18 conversation with Mr. Diamond would have -- would have said 19 look, there's positive accretion here. This is what we need to 20 tell the market, et cetera, et cetera. 21 Q. And did you have discussions with Mr. Diamond or any of 22 the other members of senior management of Barclays as to 23 whether there would be a gain, an economic gain to Barclays on 24 acquisition -- of the deal as contemplated on the 16th? 25 A. Yes. I mean, we announced it publicly on the Wednesday,</p>	<p style="text-align: right;">Page 148</p> <p style="text-align: center;">- 148 -</p> <p>1 liabilities. 2 Q. And that bucket of securities was one of a list of 3 different assets purchased, yes? 4 A. There's a ton of categories, yes. 5 Q. And on the consideration side Barclays paid 250 million, 6 correct? 7 A. 250 million plus the cost of the buildings, yes. 8 Q. Plus the cost of the buildings. And away from the 9 building, well, plus the cost of the buildings, and it assumed 10 certain liabilities, correct? 11 A. That -- yes, we assumed certain liabilities. 12 Q. And those liabilities fell into two broad categories. One 13 was contract cure, correct? 14 A. Contract cure was one. 15 Q. And the other was compensation, correct? 16 A. It was compensation, yes. 17 Q. And the liability that Barclays agreed to assume -- do you 18 need a moment there, sir? 19 A. No. It's just a fly. 20 Q. Okay. 21 A. Sorry. I hope it's not me. 22 Q. The compensation liability -- 23 THE COURT: He does seem quite attracted to you. 24 MR. GAFFEY: I've never seen anybody say that 25 literally, sir.</p>
<p style="text-align: right;">Page 147</p> <p style="text-align: center;">- 147 -</p> <p>1 so, certainly, there was conversations with Mr. Diamond, Mr. 2 Varley, among others. 3 Q. Okay, and was it your understanding in the negotiation of 4 that transaction that it was a requirement, a Barclays 5 precondition, that there be a first day economic gain, a gain 6 on acquisition for Barclays? 7 A. As I've said several times, we certainly intended to have 8 one, and we wanted one. As I said to you previously, I don't 9 recall if we -- if we didn't have that would we have gone 10 through with the deal or not, I don't know. But, certainly, it 11 was our intent to have one. 12 Q. Okay, and was it a fact, in your view, when an agreement 13 in principle was reached on the 16th of September, was there a 14 first day economic gain in the deal? 15 A. As I recall there was a first day economic gain in the 16 deal, yes. 17 Q. And the first day economic gain in the deal was derived 18 from the excess of the assets purchased over the liabilities 19 assumed and the cash paid, correct? 20 A. Yes, I believe that's correct. Yes. 21 Q. And the basic structure of the deal to which Barclays and 22 Lehman agreed on the 16th of September was one in which 23 Barclays would receive, among other things, securities assets 24 of Lehman, correct? 25 A. We purchased some securities, yes, and assumed some</p>	<p style="text-align: right;">Page 149</p> <p style="text-align: center;">- 149 -</p> <p>1 Q. The compensation liability that Barclays agreed to assume, 2 sir, was agreed between you and Mr. McDade, the amount. Is 3 that right? 4 A. That's correct. 5 Q. You agreed with Mr. McDade that the amount that Barclays 6 would assume would be two billion dollars. Is that right? 7 A. Two billion dollars. 8 Q. And when the deal came to be documented you understood 9 that that assumption of liability for comp at a two billion 10 dollar level was properly documented in the deal, correct? 11 A. My understanding was that it was and that the two billion 12 dollar assumption was to cover all comp and -- compensation, 13 which included bonuses as well as severance. 14 Q. Well, I wasn't actually asking about -- 15 A. There were some concerns around the documentation of a 16 certain clause, if I recall, that I wasn't happy with. 17 Q. I hadn't, actually, asked you that, sir, although we'll -- 18 A. All right. 19 Q. -- go into it in a while, so, for the moment, let's agree 20 to disagree about what the two billion covered and just talk 21 about the number. 22 A. Okay. 23 Q. The number was two billion for the comp-related assumption 24 of liability, correct? 25 A. Yes. Two billion dollars.</p>

Exhibit 46

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

June 21, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 54</p> <p style="text-align: center;">- 54 -</p> <p>1 whether the valuation placed on Lehman's trading assets</p> <p>2 represented the book value of those assets for purposes of the</p> <p>3 Barclays transaction?</p> <p>4 A. No. I had no knowledge of the book value. My assumption</p> <p>5 was it was the market value that was being exchanged.</p> <p>6 Q. And was it your assumption that the market value that was</p> <p>7 being exchanged was less than the book value of the Lehman</p> <p>8 assets because the book value stopped being updated on</p> <p>9 September 12th?</p> <p>10 A. I didn't know that. I mean, I didn't know whether it was</p> <p>11 higher or lower. I knew that the market -- what I thought was</p> <p>12 the market value equal to liabilities being assumed, the market</p> <p>13 value of the assets.</p> <p>14 Q. Is it your testimony that you don't know whether the</p> <p>15 market value of Lehman's assets declined after September 12th,</p> <p>16 2008?</p> <p>17 A. The assets being exchanged?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. You don't know that?</p> <p>21 A. I don't know that, no.</p> <p>22 Q. All right. Did you ever make any effort to investigate</p> <p>23 that?</p> <p>24 A. I did not.</p> <p>25 Q. Did you ever have any concern that Barclays might have</p>	<p style="text-align: right;">Page 56</p> <p style="text-align: center;">- 56 -</p> <p>1 A. Correct.</p> <p>2 Q. Did you ever come to understand what the value of the</p> <p>3 severance assumed liabilities were for Barclays?</p> <p>4 A. No.</p> <p>5 Q. When you refer to assumed severance liability here --</p> <p>6 A. Yes.</p> <p>7 Q. -- am I correct that that includes liability for certain</p> <p>8 accrued bonuses?</p> <p>9 A. No, sir. It could be -- that line I just assumed was</p> <p>10 severance liability. The assumed cure liability would have</p> <p>11 been --</p> <p>12 Q. No, not cure. I'm sorry. I may have misspoke or you may</p> <p>13 have misspoke. I didn't say cure. I didn't mean to say cure</p> <p>14 if I did. And I don't think I did. What I was talking</p> <p>15 about --</p> <p>16 A. You did.</p> <p>17 Q. -- the -- it was bonus liability.</p> <p>18 A. Well, there's nowhere on that schedule -- I don't know</p> <p>19 whether the bonus accrual is in that line or the line above. I</p> <p>20 don't know. Again, the geography I don't know about. It's --</p> <p>21 the 4.2 million dollar num -- billion dollar number had those</p> <p>22 three components.</p> <p>23 Q. Okay. So the 4.2 billion dollar item had assumed cure,</p> <p>24 assumed bonus and assumed severance, is that correct?</p> <p>25 A. That's my understanding.</p>
<p style="text-align: right;">Page 55</p> <p style="text-align: center;">- 55 -</p> <p>1 negotiated a discount from the market value of the Lehman</p> <p>2 assets that it was acquiring?</p> <p>3 A. No.</p> <p>4 Q. Were you ever told that Barclays had obtained a discount</p> <p>5 on the valuation of the Lehman assets for purpose of the</p> <p>6 transaction?</p> <p>7 A. No.</p> <p>8 Q. Well, you actually saw a presentation in which was talked</p> <p>9 about a negotiated five billion dollar discount in October</p> <p>10 2008, correct, sir?</p> <p>11 A. That was pricing negotiation.</p> <p>12 Q. I'm sorry. What?</p> <p>13 A. That was pricing negotiation was my interpretation,</p> <p>14 counselor.</p> <p>15 Q. By pricing negotiation, you mean they were negotiating the</p> <p>16 price at which Barclays would acquire the assets?</p> <p>17 A. Well, if you were at Barclays and you set a price on a</p> <p>18 security and Lehman sets a price on a security, you might not</p> <p>19 agree. You have a negotiation as to figure out what the fair</p> <p>20 market value price of that is. That's I assume what happened.</p> <p>21 I assume the five billion dollars was a deterioration in the</p> <p>22 price during that chaotic week, yeah.</p> <p>23 Q. And if the five billion dollars was a deterioration during</p> <p>24 that chaotic week, that would have meant that the market value</p> <p>25 of Lehman's assets was declining during that week, correct?</p>	<p style="text-align: right;">Page 57</p> <p style="text-align: center;">- 57 -</p> <p>1 Q. And that 4.2 billion dollar number, have you ever seen</p> <p>2 that in writing any place?</p> <p>3 A. Yes. I saw it on a schedule that Steve Berkenfeld showed</p> <p>4 me. That was a schedule -- it was -- again, I don't recall</p> <p>5 that schedule now but I saw it on a schedule somewhere.</p> <p>6 Q. When did he show you that schedule?</p> <p>7 A. Maybe he showed me that schedule right about the time he</p> <p>8 was describing the transaction.</p> <p>9 Q. When was that?</p> <p>10 A. The week of the 15th.</p> <p>11 Q. Did he tell you who prepared that schedule?</p> <p>12 A. No, he did not.</p> <p>13 Q. Did you understand that the estimates for severance and</p> <p>14 bonuses and cure changed between the preparation of that</p> <p>15 schedule and the closing of the transaction?</p> <p>16 A. I did not know that.</p> <p>17 Q. Did you ever come to know that?</p> <p>18 A. I came to know that after the fact, yes.</p> <p>19 Q. Okay. And when did you come to know that?</p> <p>20 A. I came to know that after I got the response back from</p> <p>21 Jonathan Hughes --</p> <p>22 Q. And --</p> <p>23 A. -- in the first quarter of 2009.</p> <p>24 Q. And do you now know how the total of comp and severance</p> <p>25 and cure and bonus liabilities were described to the Court,</p>

Exhibit 47

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (JMP)

- - - - -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

August 23, 2010

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

<p>Page 118</p> <p>1 going to ask you to turn to Tab 14 which is a multi page 2 document and it is Movant's Trial Exhibit 147 in evidence. And 3 I'm not going to take you through the whole thing. So, I'm 4 going to ask you take a look at the last page. Page number 70. 5 A. It's the very last page. Okay. 6 MR. GAFFEY: Steve, can we have that on screen, 7 please? 8 A. This is the schedule here? 9 Q. Yes. Just before we get on screen, have you ever seen 10 that before? 11 A. Only in connection with preparation for this trial. 12 Q. Did you see it at or around -- I take it, then, you did 13 not see it at or around the time that the Court was being asked 14 to --approve this transaction. 15 A. I did not. 16 Q. And I take it, then, sir, you never had any conversations 17 with Mr. Seery about negotiations with Barclays to arrive at a 18 value of what price could you obtain if you sold the securities 19 quickly, in a hurry? 20 A. I did not. 21 Q. So, when you sat at the sale hearing on the 19th, sir, and 22 you heard the number 47.4 given to the Court, you had no 23 knowledge of any such activity taking place? 24 A. I had no knowledge of that what you just described, no. 25 MR. GAFFEY: Your Honor, may I just have one moment to</p>	<p>Page 120</p> <p>1 officer of both parties, correct? 2 A. Correct. 3 Q. Is Movant's Exhibit 2 initialed by an officer of both 4 parties? 5 A. I see -- I just see one SB initial, I don't see another 6 set of initials. 7 Q. Are you aware of any schedule like this that was initialed 8 by an officer of both parties as provided for in the APA? 9 A. I'm not aware, that's why I -- at the time when he asked 10 me the question before I wasn't quite sure which financial 11 schedule this referred to. 12 Q. Now, the reference on M-2 is to comp, do you see that? 13 A. Yes. 14 Q. It doesn't say bonus, it doesn't say severance, it says 15 comp, is that correct? 16 A. That's right. 17 Q. And at the time that you were working on the APA and on 18 this transaction, did you have an understanding of what was 19 encompassed within the term comp? 20 A. At the time my belief was that it was a combination of the 21 bonuses that they would pay and if into the extent that they 22 weren't paying someone a bonus because they were terminating 23 that person's bonus it would include severance for that person. 24 That was my recollection at the time. 25 Q. Now, Mr. Gaffney showed you some materials that related to</p>
<p>Page 119</p> <p>1 consult with my colleagues? I may be finished. 2 THE COURT: Surely. 3 (Pause) 4 MR. GAFFEY: Nothing further for Mr. Shapiro, Your 5 Honor. Thank you for your time, sir. 6 THE WITNESS: Thank you. 7 THE COURT: No questions from - 8 UNIDENTIFIED SPEAKER: No questions from me. 9 THE COURT: Any movants, redirect? 10 MR. BOIES: Yes, thank you, Your Honor. 11 REDIRECT EXAMINATION 12 BY MR. BOIES: 13 Q. I'd like to begin by asking about the comp or compensation 14 issue that you asked about by counsel. 15 A. Okay. 16 Q. And that connection he directed your attention to the 17 witness binder that you have with your name on it. 18 A. Okay. 19 Q. And Movant's Exhibit 1 which is the APA and he directed 20 your attention first to paragraph 9.1(c). 21 A. Yes. 22 Q. And then he directed your attention to Movant's Exhibit 2 23 and said this is that schedule. Do you recall that? 24 A. Yes, I do. 25 Q. Now, 9.1(c) talks about a schedule that is initialed by an</p>	<p>Page 121</p> <p>1 Mr. McDade's testimony at trial. 2 A. Yes. 3 Q. And I'd like to direct your attention to April 26th, the 4 official transcript, page 160. 5 A. I'm sorry, what tab should I be looking at? 6 Q. We're going to put it on the screen. 7 A. Okay. 8 Q. Because I know in advance what questions I'm going to ask 9 you but I don't know what questions he's going to ask you. And 10 if we could look at line 24 it says, 11 "Q. The other part of that question had to do with 12 compensation, sir. 13 "A. Right. Barclays also assumed a two billion compensation 14 liability with respect to the combination of the employee's 15 bonus process and the severance process." 16 Q. Do you see that? 17 A. I do. 18 Q. And as you testified to counsel, Mr. McDade was the lead 19 negotiator for Lehman, is that correct? 20 A. That's correct. 21 Q. And you agree with this statement that he makes? 22 A. Yes, I do. 23 Q. And let me direct your attention to what Mr. Miller said 24 at trial in the April 28th, 2010 official transcript at page 25 32, line 20. "In connection with the compensation, that also</p>

<p style="text-align: right;">Page 186</p> <p>1 Q. You were not involved in the sale negotiations, correct?</p> <p>2 A. No.</p> <p>3 Q. Did you come to New York at some point to do work related</p> <p>4 to the sale?</p> <p>5 A. Yes, I did.</p> <p>6 Q. And when was that?</p> <p>7 A. On or around the 22nd of September, 2008.</p> <p>8 Q. And what was the purpose of your coming to New York?</p> <p>9 A. Mr. Evans (ph.) requested that I come and assist him in my</p> <p>10 general responsibilities but specifically in respect of the</p> <p>11 sale and tracking and monitoring and modeling various</p> <p>12 commitments that Barclays were taking on as part of the</p> <p>13 transaction.</p> <p>14 Q. And were you aware that Barclays had taken on certain</p> <p>15 compensation or "comp" obligations under the APA?</p> <p>16 A. I had seen a copy of the APA; I saw that there were</p> <p>17 articles within the version of the APA that I had seen but I</p> <p>18 had no specific understanding as to what Barclays' obligations</p> <p>19 were, in fact, under that APA.</p> <p>20 Q. Was it your responsibility to develop that understanding</p> <p>21 or was that somebody else's job?</p> <p>22 A. It wasn't my responsibility.</p> <p>23 Q. I want to direct your attention to a conversation on -- I</p> <p>24 believe there is evidence that you had a with a PWC auditor</p> <p>25 whose first name is Mike and second name I have some difficulty</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Yes. If somebody told you that Mike believed that you had</p> <p>2 told him that Barclays was going to pay two billion dollars for</p> <p>3 bonuses only, not for other compensation aspects like severance</p> <p>4 but for bonuses only, what would your reaction be to that?</p> <p>5 A. I would be surprised at that. My immediate reaction would</p> <p>6 be that he presume -- I believe he would have misinterpreted</p> <p>7 the extent of my knowledge, or lack thereof, around the</p> <p>8 obligations under the sale and the APA in general. And</p> <p>9 misunderstood or inferred too much from the conversation that</p> <p>10 we did, in fact, have.</p> <p>11 Q. Now, after this period of time when you'd just arrived in</p> <p>12 New York, did you ultimately come to understand what the two</p> <p>13 billion dollar figure encompassed?</p> <p>14 A. Not -- not in terms of Barclays' obligations under the</p> <p>15 APA, no.</p> <p>16 Q. Because that was not your responsibility?</p> <p>17 A. No.</p> <p>18 Q. Did PWC ultimately sign off on the accruals that Barclays</p> <p>19 made in connection with the sales transaction?</p> <p>20 A. Yes, I believe I did and that they signed the audit report</p> <p>21 supporting the report of accounts at Barclays PLC of which that</p> <p>22 was a part.</p> <p>23 Q. And do you know, from your own personal knowledge, what</p> <p>24 those accounting entries amounted to in terms of the bonus</p> <p>25 amount that was being paid or accrued?</p>
<p style="text-align: right;">Page 187</p> <p>1 pronouncing but it starts with a G.</p> <p>2 A. I think it's Mike Guarnuccio.</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. And meaning no disrespect to the gentleman, I'm going to</p> <p>6 refer to him as "Mike".</p> <p>7 A. Right.</p> <p>8 Q. Did you have a conversation with Mike concerning the bonus</p> <p>9 obligation that Barclays had under the APA?</p> <p>10 A. I recall that we had a conversation at around the time --</p> <p>11 around Barclays' overall compensation plans.</p> <p>12 Q. And when would that conversation have been?</p> <p>13 A. As I said, at around the time of my arrival in New York at</p> <p>14 the beginning of my work. As I say, I can't be precise about</p> <p>15 the dates. I could not find it in my diary.</p> <p>16 Q. And at the time that you had this conversation with Mike,</p> <p>17 did you have, yourself, an understanding of exactly what</p> <p>18 Barclays' obligations were?</p> <p>19 A. No, I did not.</p> <p>20 Q. At the time of that conversation, if Mike understood that</p> <p>21 you were telling him that Barclays was going to make a two</p> <p>22 billion dollar payment for bonuses only, not other compensation</p> <p>23 or severance but for bonuses only, what would your reaction be</p> <p>24 to that?</p> <p>25 A. Sir, could you repeat the question, please?</p>	<p style="text-align: right;">Page 189</p> <p>1 A. Not the bonus amount, no.</p> <p>2 Q. Let me ask you to turn to Tab 3 in your book. And this is</p> <p>3 Barclays' Exhibit 142A.</p> <p>4 A. Um-hum.</p> <p>5 Q. And can you identify this document?</p> <p>6 A. Yes. This is the schedule that I was asked to prepare.</p> <p>7 Q. And who asked you to prepare this?</p> <p>8 A. Gary Romain -- Mr. Gary Romain who works in our finance</p> <p>9 department.</p> <p>10 Q. And what was the purpose of this being prepared, if you</p> <p>11 know?</p> <p>12 A. Gary asked me to prepare the schedule to track -- to</p> <p>13 identify and track all compensation-related items in terms of</p> <p>14 compensation delivered or planned to be delivered to former</p> <p>15 Lehman Brothers employees in respect to their pre-acquisition</p> <p>16 services.</p> <p>17 Q. And when was this prepared?</p> <p>18 A. We prepared several iterations of this throughout a period</p> <p>19 of time. I don't recall precisely when we began this process</p> <p>20 but it would have been -- I believe it would have been within</p> <p>21 the period after -- obviously after the sale had took place but</p> <p>22 I can't -- I can't be precise, unfortunately.</p> <p>23 Q. Now, at the top, there are four columns. And the third</p> <p>24 column says "Total Dollars in Millions". Do you see that?</p> <p>25 A. Yes, I do.</p>

Page 190	Page 192
<p>1 Q. And under that there is something that says "OBS 2 Compensation Accrual". Do you see that? 3 A. Yes. 4 Q. And what does that represent? 5 A. That represents the opening balance sheet compensation 6 accrual. 7 Q. And this in connection with the APA, is that correct? 8 A. I was advised to use this by Mr. Romain. 9 Q. I'm sorry, what? 10 A. I was advised to use this as a reference point by Mr. 11 Romain for the schedule. 12 Q. And where it says "Source, APA"? 13 A. That was what he informed me. 14 Q. Okay. So he informed you that this was -- that the APA 15 was the source of this accrual? 16 A. Yes. 17 Q. And the amount of this accrual was two billion dollars, is 18 that correct? 19 A. That's what he informed me, yes. 20 Q. And did he inform you of all of the other numbers that are 21 here? 22 A. No. 23 Q. Who informed you of these numbers? 24 A. We -- as I mentioned, he requested that I track and 25 collate and aggregate up all items related to pre-employment --</p>	<p>1 does that relate to? 2 A. Those were all annual bonus awards made to individuals 3 that were in our compensation database as part of the 2008 4 compensation round at Barclays Capital. 5 Q. And these are bonuses for the ex-Lehman Brother employees? 6 A. Absolutely, former Lehman Brother employees, yes. 7 Q. And then the next one says "IBD Grad Programs", do you see 8 that? 9 A. I do. 10 Q. And what does that relate to? 11 A. Those were the annual bonuses payable to graduates that 12 were on our investment banking graduate program. But they were 13 former Lehman Brothers graduates that we obviously took on as 14 part of the acquisition. 15 Q. So these were also bonuses for the former Lehman Brothers 16 personnel? 17 A. Yes. 18 Q. And then the next two items are "Severance" and then 19 "Severance Payable in the Future", is that correct? 20 A. Correct. 21 Q. And all of these numbers related to the former Lehman 22 Brothers personnel, correct? 23 A. Yes, all the items on the schedule relate to former Lehman 24 Brothers employees. 25 Q. The next item says "Payroll Tax and Equity Compensation".</p>
Page 191	Page 193
<p>1 pre-acquisition services performed by former Lehman Brothers 2 employees. These items came up as we -- as events unfolded and 3 I had a team of finance professionals and HR professionals that 4 supported me in generating the schedule. 5 Q. And I want to -- I want to go through them and ask you 6 about some of these specific items. 7 A. Okay. 8 Q. First, where it talks about "Pre-22/9 Payroll Items", do 9 you see that? 10 A. I do. 11 Q. What does that relate to? 12 A. Those were -- in substance there were two issues that -- 13 that these were items that were paid for the -- to or for the 14 benefit of former Lehman Brothers employees in respect of a 15 pre-acquisition payroll -- or payroll-related item. 16 Q. And the next item says "Replacement RSUs", do you see 17 that? 18 A. Yes. 19 Q. And what does that relate to? 20 A. Those were cash awards that Barclays gave to former Lehman 21 Brothers employees to replace the lost value of bonus awards 22 that they had received earlier in 2008 from Lehman Brothers. 23 Q. So was this included as -- is that a bonus item? 24 A. I would categorize it as such, yes. 25 Q. The next item says "Bonus Including Social Tax". And what</p>	<p>1 And what does that relate to? 2 A. Those are payroll taxes that we had estimated would be 3 payable on the granting of equity compensation awards to former 4 Lehman Brothers employees in respect to their pre-acquisition 5 service. It's derived from the numbers in the equity column on 6 the schedule and of -- you know, bonus-related in the sense 7 that they're directly linked to the bonuses reflected on the 8 schedule. 9 Q. So this was part of the cost of the bonuses, is that 10 correct? 11 A. Yes, it was. 12 Q. And let me just jump down near the bottom where it says 13 "Payroll Taxes on ISP Awards", you see that? 14 A. I do. 15 Q. And was that also a cost of the bonuses? 16 A. Yes. 17 Q. And then going back up to where it says "Acquisition 18 Buyout Investing Over Two Years", do you see that? 19 A. Yes. 20 Q. And what does that relate to? 21 A. That related to performance bonus awards that were due and 22 payable to an individual under his contract with Lehman 23 Brothers that Barclays matched as part of the acquisition. 24 Q. And was that, as with all of these amounts, amounts that 25 related to pre-acquisition services for the former Lehman</p>

Exhibit 48

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.
Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

August 24, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 10</p> <p>1 to a litigation position. We're going to limit our questions</p> <p>2 to the chart.</p> <p>3 MR. HINE: Okay, Your Honor. You can take the chart</p> <p>4 down.</p> <p>5 Q. Mr. Exall, you were designated as a 30(b)(6) witness in</p> <p>6 this case with respect to bonus and severance payments made to</p> <p>7 former Lehman employees who came over to Barclays, isn't that</p> <p>8 right?</p> <p>9 A. I believe that was the categorization of my witness in</p> <p>10 relation to the schedule that was prepared.</p> <p>11 Q. Okay. And let's just take a look at your deposition</p> <p>12 notice -- or your 30(b)(6) notice that relates to you.</p> <p>13 MR. HINE: Could you please put up M766?</p> <p>14 Q. And that's in your binder as well, Mr. Exall. M766.</p> <p>15 A. 766. Bear with me. Okay.</p> <p>16 Q. You recognize this document, Mr. Exall?</p> <p>17 (Pause)</p> <p>18 A. I may have seen it.</p> <p>19 Q. Okay. You saw this before your deposition, correct?</p> <p>20 A. I don't specifically recall it but --</p> <p>21 Q. Okay. Any reason to doubt that this is the deposition --</p> <p>22 30(b)(6) deposition notice to which Barclays was responding</p> <p>23 when they designated you as their witness on bonus and</p> <p>24 severance payments?</p> <p>25 A. I have no reason to doubt it, no.</p>	<p style="text-align: right;">Page 12</p> <p>1 referring to a particular spreadsheet. Do you see that?</p> <p>2 A. Could you highlight it for me, please?</p> <p>3 Q. About the third line down, it talks about a spreadsheet</p> <p>4 produced by Barclays and numbered BCI --</p> <p>5 A. Yes.</p> <p>6 Q. -- EX000077287. Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. And now that is not the same Bates number on the M107 that</p> <p>9 we just looked at.</p> <p>10 A. Okay.</p> <p>11 Q. Correct?</p> <p>12 A. If you say so.</p> <p>13 Q. Okay. Well, let's look at M107 again. You'll see the</p> <p>14 number in the lower right-hand corner. It's a different</p> <p>15 number.</p> <p>16 A. Yes.</p> <p>17 Q. You might want to keep your finger on the M107 tab --</p> <p>18 A. Okay.</p> <p>19 Q. -- 'cause we'll be going back to it. I just want to</p> <p>20 clarify that apparent discrepancy. The reason the numbers are</p> <p>21 different is because M107 is an updated version of an earlier</p> <p>22 spreadsheet that you sent -- prepared in connection with this</p> <p>23 case, right?</p> <p>24 A. That's correct.</p> <p>25 Q. And so, the earlier version was sent to the movants and</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. And you generally reviewed this document before</p> <p>2 your deposition, right?</p> <p>3 A. I don't specifically recall it but I probably did, yes.</p> <p>4 Q. Okay. Well, you understood you were being deposed as a</p> <p>5 30(b)(6) witness, correct?</p> <p>6 A. Yeah. I recall the phrase and I recall discussion around</p> <p>7 what that meant, yes.</p> <p>8 Q. Okay. And just for clarity sake, could you please turn to</p> <p>9 Schedule A of this document?</p> <p>10 A. Okay.</p> <p>11 Q. And you recognize that as the topics on which you were</p> <p>12 designated as a 30(b)(6) witness, correct?</p> <p>13 A. It makes sense to me.</p> <p>14 Q. Excuse me?</p> <p>15 A. It does make sense to me, yes.</p> <p>16 Q. Okay.</p> <p>17 MR. HINE: Your Honor, we'd move this document into</p> <p>18 evidence.</p> <p>19 MR. BOIES: No objection, Your Honor.</p> <p>20 THE COURT: Fine. It's admitted.</p> <p>21 (Movants' Exhibit 107, deposition notice designating Paul Exall</p> <p>22 as Barclays' 30(b)(6) witness on bonus and severance payments,</p> <p>23 was hereby received into evidence as of this date.)</p> <p>24 Q. Just for a point of clarity, Mr. Exall, you'll see on</p> <p>25 Schedule A there's a Bates number, what we call a Bates number</p>	<p style="text-align: right;">Page 13</p> <p>1 that was what is referenced in the 30(b)(6) notice, right?</p> <p>2 A. I recall that there were two schedules. And this one here</p> <p>3 is the updated one, yes.</p> <p>4 Q. Okay. So M107 is the updated version, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And that's the version about which you testified at your</p> <p>7 deposition, correct?</p> <p>8 A. That's correct. I recall the other one was -- we</p> <p>9 discussed that at the deposition, yeah.</p> <p>10 Q. It was superseded and M107 replaced the one that was</p> <p>11 referred to --</p> <p>12 A. Yes.</p> <p>13 Q. -- in the deposition notice, is that right?</p> <p>14 A. Yes. That's accurate.</p> <p>15 Q. Okay.</p> <p>16 MR. HINE: You can take that down, please.</p> <p>17 Q. Now, Mr. Exall, understanding that you were designated for</p> <p>18 certain topics as a 30(b)(6) witness, I just want to go over a</p> <p>19 little bit of your background. You had no role whatsoever in</p> <p>20 the negotiations surrounding the sale transaction between</p> <p>21 Lehman and Barclays, is that right?</p> <p>22 A. I did not have any role, no.</p> <p>23 Q. Right. Okay. So you had no role in negotiating the</p> <p>24 compensation provisions that are embodied in the asset purchase</p> <p>25 agreement, correct?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. No.</p> <p>2 Q. Okay. You had no role in disclosures that were made to</p> <p>3 the Court about compensation issues, is that right?</p> <p>4 A. No. I was not involved.</p> <p>5 Q. Okay. And you weren't at any of the sale hearings -- the</p> <p>6 hearing on September 19th, correct?</p> <p>7 A. No. I was not there.</p> <p>8 Q. In fact, you weren't even in New York then, right?</p> <p>9 A. That's my recollection. I was I London, yes.</p> <p>10 Q. You came to New York sometime around the 21st or 22nd of</p> <p>11 September, is that right?</p> <p>12 A. I believe I landed Sunday -- Sunday evening, yes.</p> <p>13 Q. Okay.</p> <p>14 A. The 21st.</p> <p>15 Q. So even after you came to New York, you didn't review</p> <p>16 copies of the clarification letter that relates to the</p> <p>17 Lehman/Barclays transaction, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. So it's safe to say you have no first-hand</p> <p>20 knowledge about what exactly took place and the negotiations</p> <p>21 between the parties to the sale transaction right?</p> <p>22 A. I have no first-hand knowledge of the events at the time,</p> <p>23 yeah.</p> <p>24 Q. Right. And so if you wanted to learn what had happened in</p> <p>25 those negotiations, you would have to confer with someone who</p>	<p style="text-align: right;">Page 16</p> <p>1 thereof, yes.</p> <p>2 Q. He thought you would need that in connection with this</p> <p>3 function you were going to perform for Barclays, right?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. And you were also given a copy of the September</p> <p>6 16th financial schedule that's referred to in the APA?</p> <p>7 A. I was given the schedule which when I asked -- sorry. Let</p> <p>8 me start that again. I asked for the schedule referred to in</p> <p>9 Article 9 of the draft that I had seen.</p> <p>10 Q. Okay.</p> <p>11 A. And I was given a schedule that was purported to be that</p> <p>12 schedule referred to.</p> <p>13 Q. Okay. So you read the asset purchase agreement and you</p> <p>14 saw in Article 9 a reference to a schedule and you asked for a</p> <p>15 copy?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. And Mr. Clackson (ph.) gave you a copy of that</p> <p>18 schedule?</p> <p>19 A. I believe it was Mr. Clackson, yes.</p> <p>20 Q. And Mr. Clackson represented to you that that was the</p> <p>21 schedule referred to in Section 9.1(c) of the APA, isn't that</p> <p>22 right?</p> <p>23 A. I don't recall exactly what he said to me about it, but I</p> <p>24 had asked for a copy of that schedule and that's what I</p> <p>25 received.</p>
<p style="text-align: right;">Page 15</p> <p>1 was actually involved, right?</p> <p>2 A. That would be correct.</p> <p>3 Q. Okay. And you would necessarily defer to someone who was</p> <p>4 involved in the negotiations if you had to develop an</p> <p>5 understanding of the intent of the parties and what took place</p> <p>6 in those negotiations. Isn't that fair to say?</p> <p>7 A. It's fair to say. If I had a question of events at the</p> <p>8 time, I would have discussed those, if relevant, with people</p> <p>9 involved, yes.</p> <p>10 Q. Right. Right. Now when you did come over to New York in</p> <p>11 late September of 2008, you were asked to undertake a role in</p> <p>12 tracking, monitoring and modeling how much money Barclays was</p> <p>13 paying to former Lehman employees who came over to Barclays,</p> <p>14 right?</p> <p>15 A. Yes. That was my functions, yes.</p> <p>16 Q. Okay. That's one of the reasons you were asked to come</p> <p>17 over here, correct?</p> <p>18 A. That was one of the reasons, yes.</p> <p>19 Q. Okay. And on or about September 22nd was the first time</p> <p>20 you were handed a copy of the asset purchase agreement,</p> <p>21 correct?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Okay. And Mr. Romaine gave you a copy of that agreement?</p> <p>24 A. He sent me a copy of -- and I don't -- I'm not certain</p> <p>25 whether it was the final version, but he sent me a copy</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. But in fact -- well -- it was represented to you -- isn't</p> <p>2 it correct that that was the schedule that was referred to in</p> <p>3 Section 9.1(c) of the APA, right?</p> <p>4 A. As I said, I requested a copy of the schedule referred to</p> <p>5 in Article 9 and that's what I received from finance.</p> <p>6 Q. Okay. Mr. Exall, could you turn to -- in your binder is a</p> <p>7 copy of the transcript from your deposition.</p> <p>8 A. Sure.</p> <p>9 Q. And I refer you to page 38.</p> <p>10 A. Sorry. Where --</p> <p>11 Q. Page 38. Should be a tab marked "Deposition".</p> <p>12 A. Page 38?</p> <p>13 Q. Page 38. And you'll see a series of questions starting</p> <p>14 on -- let's go to line 2. You'll see -- well, I'm sorry. I</p> <p>15 have to go to the prior page. I apologize. Page 37 on line</p> <p>16 22. Excuse me.</p> <p>17 A. Yes.</p> <p>18 Q. And you'll see we're talking about the schedule and I ask:</p> <p>19 "Okay. Who gave you that schedule?"</p> <p>20 "A. Mr. Clackson passed me the schedule."</p> <p>21 Now if we continue on to the next page:</p> <p>22 "Q. What did he tell you about it?"</p> <p>23 "A. He represented this as being the schedule referred to in</p> <p>24 the APA."</p> <p>25 Now that's the testimony that you gave under oath at your</p>

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<p>1 deposition, is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And that was true testimony when you gave it?</p> <p>4 A. Yes. That's my testimony.</p> <p>5 Q. Okay.</p> <p>6 A. I would add that further on, it states that I don't recall</p> <p>7 what he told me about it.</p> <p>8 Q. I understand.</p> <p>9 MR. HINE: Now can we put up Exhibit M-2, Steve?</p> <p>10 Q. If you turn in your binder to Exhibit M2, Mr. --</p> <p>11 A. M2?</p> <p>12 Q. M2, yes.</p> <p>13 A. Okay.</p> <p>14 Q. And can you confirm that that is, in fact, the copy of the</p> <p>15 schedule that Mr. Clackson gave you?</p> <p>16 A. I believe that's the schedule that was passed to me, yes.</p> <p>17 Q. Okay. And in performing this function, you were -- in</p> <p>18 tracking payments to former Lehman employees, you operated</p> <p>19 under the assumption that that was the schedule referred to in</p> <p>20 Section 9.1(c) of the APA, right?</p> <p>21 A. No. I didn't have a real view as to what the schedule was</p> <p>22 that related to Article 9. It was unclear to me in that the</p> <p>23 draft of the APA that I was reading referred to a schedule that</p> <p>24 had been initialed by two parties. This has only been</p> <p>25 initialed by one. The -- Article 9 also referred to bonus on</p>	<p>1 and, for wont of a better word, skimmed the rest.</p> <p>2 Q. Fair enough. And the reason you read Article 9 is 'cause</p> <p>3 that related to the work you were going to be doing in tracking</p> <p>4 payments to former Lehman employees, right?</p> <p>5 A. No. Mr. Romaine directed me to Article 9 to say this may</p> <p>6 be something that you may be interested in.</p> <p>7 Q. Okay. And so you -- Article 9 or the APA became kind of a</p> <p>8 point of reference for you in tracking the payments to former</p> <p>9 Lehman employees, right?</p> <p>10 A. No, it did not.</p> <p>11 Q. It did not? Can you turn in your deposition to page 17.4</p> <p>12 --</p> <p>13 A. 17?</p> <p>14 Q. -- 17, please?</p> <p>15 A. 17.</p> <p>16 Q. 17 at the very bottom starting on line 25. I ask:</p> <p>17 "Okay. And when were you passed that agreement?"</p> <p>18 "A. I can't recall the exact date but it would have been</p> <p>19 around the 22nd of September or shortly thereafter.</p> <p>20 "Q. Okay. And did you need to consult that agreement to do</p> <p>21 your job from then on?"</p> <p>22 "A. It was a point of reference, yes."</p> <p>23 That's the testimony you gave at your deposition, right?</p> <p>24 A. Okay.</p> <p>25 Q. So the APA was a point of reference for your future work,</p>
Page 19	Page 21
<p>1 several occasions. This schedule doesn't have the word bonus</p> <p>2 on it. I was unclear as to what the schedule actually</p> <p>3 represented. And in fact, it was not necessary for me to</p> <p>4 understand that for the purposes of my role.</p> <p>5 Q. I understand that's your position. But my question is</p> <p>6 were you given any other schedules?</p> <p>7 A. In relation to the APA?</p> <p>8 Q. In relation to your work in tracking payments to Barclays'</p> <p>9 employees -- or Lehman employees --</p> <p>10 A. I received --</p> <p>11 Q. -- under the APA.</p> <p>12 A. On a day to day basis, I received many schedules on many</p> <p>13 topics.</p> <p>14 Q. Were you given any schedules that were represented to you</p> <p>15 as that -- as referred to in Section 9.1(c) of the APA?</p> <p>16 A. No. This is the only schedule that was passed to me.</p> <p>17 Q. Okay. Now let's look over a copy of the APA, please,</p> <p>18 which is M1. Now this is the copy of the APA that you were</p> <p>19 given, Mr. Exall?</p> <p>20 A. I don't recall if this is the specific copy --</p> <p>21 Q. Okay.</p> <p>22 A. -- but I received a draft version of it, as I said.</p> <p>23 Q. Okay. In general, you reviewed this agreement generally.</p> <p>24 But is it fair to say you focused on Section 9.1 of the APA?</p> <p>25 A. It'll be fair to say I read Article 9 as you've described</p>	<p>1 right?</p> <p>2 A. Apologies for the previous -- but yes. I read it. It</p> <p>3 became part of my understanding. And it -- and from then on,</p> <p>4 it did not play a major part in what I actually did.</p> <p>5 Q. Right. But I -- and I understand you testified yesterday</p> <p>6 that you didn't have a specific understanding of the exact</p> <p>7 provisions of the APA as they relate to compensation, right?</p> <p>8 A. No.</p> <p>9 Q. No, you did not testify to that effect or --</p> <p>10 A. No. I -- in reading Article 9 and referencing the</p> <p>11 schedule that was passed to me, I had no clear understanding of</p> <p>12 what Barclays' obligations may or may not have been under the</p> <p>13 APA.</p> <p>14 Q. You didn't have a legal understanding, right?</p> <p>15 A. No legal --</p> <p>16 Q. It's fair to say you had a general familiarity with</p> <p>17 Article 9, correct?</p> <p>18 A. I read the clause.</p> <p>19 Q. Okay. So when you're doing your chart, you have to know,</p> <p>20 for example, what's a bonus and what's a severance, right, in</p> <p>21 order to prepare your chart, correct?</p> <p>22 A. I do know what a bonus and what a severance is.</p> <p>23 Q. Yeah, 'cause you have to know that. You have to know the</p> <p>24 cutoff dates for bonuses and severance that are set forth in</p> <p>25 Article 9 in order to determine whether to put those payments</p>

<p style="text-align: right;">Page 42</p> <p>1 requested from Finance a copy of the schedule --</p> <p>2 Q. Correct.</p> <p>3 A. -- which was passed to me by Finance. And I'm effectively</p> <p>4 sending the same schedule that they sent to me back to them.</p> <p>5 Q. Sure. Sure. Well, you're sufficiently --</p> <p>6 A. Yes.</p> <p>7 Q. -- sufficiently familiar with the paragraph 9.1(c) to know</p> <p>8 that that's what he was talking about when he was asking you,</p> <p>9 correct?</p> <p>10 A. It's the same question I had asked earlier, so yes.</p> <p>11 Q. Okay. And you'll see later on up the e-mail chain</p> <p>12 apparently they forward your schedule to -- they forward that</p> <p>13 schedule to PwC, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And in response to your forwarding the schedule, no</p> <p>16 one said, hey, you got the wrong schedule, right?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Okay. No one said, hey, that schedule's not initialed by</p> <p>19 a Barclays officer. We shouldn't send it to PwC. Did they?</p> <p>20 A. I can't tell -- I mean Finance responded to an audit</p> <p>21 request.</p> <p>22 Q. Okay. But you don't recall anyone saying that and not</p> <p>23 forwarding it to PwC 'cause it wasn't initialed by a Barclays</p> <p>24 officer, do you?</p> <p>25 A. No. We, in fact, did forward it to PwC.</p>	<p style="text-align: right;">Page 44</p> <p>1 2009 scheduled at 8 a.m. between Mr. Guarnuccio and his team</p> <p>2 and yourself to discuss what may have to be paid out of two</p> <p>3 billion dollars, right?</p> <p>4 A. I believe Mr. Guarnuccio had some questions of Gary</p> <p>5 Romaine. And we -- I believe a conference call had been</p> <p>6 arranged to discuss those questions at that meeting prior to</p> <p>7 the PwC signing off on the audit.</p> <p>8 Q. And you recall --</p> <p>9 A. -- which then affected --</p> <p>10 Q. You recall that conversation -- that conference call</p> <p>11 taking place, right?</p> <p>12 A. Absolutely.</p> <p>13 Q. And you were on it?</p> <p>14 A. I was on it.</p> <p>15 Q. So you had sufficient understanding of the issues to be on</p> <p>16 a conference call with PwC relating to this discussion,</p> <p>17 correct?</p> <p>18 A. PwC had some questions that they wanted to discuss.</p> <p>19 Q. And sometime after that conference call, PwC eventually</p> <p>20 signed off on how Barclays was accounting for the compensation</p> <p>21 payments to Lehman employees, right?</p> <p>22 A. I believe so. They signed our report of accounts which</p> <p>23 would eventually -- as their official auditors of which the</p> <p>24 acquisition accounting was a part.</p> <p>25 Q. Okay. And that's -- you testified about that yesterday,</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Okay.</p> <p>2 A. I do recall --</p> <p>3 Q. Do you recall --</p> <p>4 A. -- discussions at the time -- sorry -- to elaborate, I do</p> <p>5 recall discussions at the time where I said, hey, this is</p> <p>6 initialed by one person but this is the schedule that was</p> <p>7 passed to me. And their OC passed it on to PwC as requested.</p> <p>8 Q. Okay. So you read the APA sufficiently to know that there</p> <p>9 was a provision in there that talked about a schedule being</p> <p>10 initialed by both parties, right?</p> <p>11 A. Sure.</p> <p>12 Q. Sure. Okay. And when you forwarded this -- when they</p> <p>13 forwarded the schedule on to PwC, no one said -- provided you</p> <p>14 any feedback and said, hey wait, this schedule applies to both</p> <p>15 bonus and severance, did they?</p> <p>16 A. I don't recall anyone coming back to me on that either</p> <p>17 from Finance or PwC.</p> <p>18 Q. Okay. And it's fair to say that the discussions between</p> <p>19 Mr. Guarnuccio and members of Barclays continued even after</p> <p>20 November on this type of -- this topic, right?</p> <p>21 A. Certainly. The accounts were only signed by PwC, I would</p> <p>22 say, in and around February 2009. And I recall being on a</p> <p>23 conference call with Mr. Guarnuccio as well as some of our</p> <p>24 finance people in late January 2009.</p> <p>25 Q. Okay. So you were on a conference call on January 27th,</p>	<p style="text-align: right;">Page 45</p> <p>1 right? At some point, PwC -- at some point after January of</p> <p>2 '09, PwC signed off on your report of accounts, correct?</p> <p>3 A. Yes. I believe most of the queries -- or all of the</p> <p>4 queries must have been resolved by then, so yes.</p> <p>5 Q. Okay. I want to take you back to September 2008 again --</p> <p>6 A. Okay.</p> <p>7 Q. -- when you first began tracking or working on this</p> <p>8 project to track the bonus payments or any kind of compensation</p> <p>9 payments paid to Lehman employees. When you first began</p> <p>10 tracking the bonus payments, you used a number that was</p> <p>11 considerably lower than two billion dollars, right?</p> <p>12 A. I used -- I was instructed to use in the daily updates</p> <p>13 that I was preparing a reference point of 1.4 billion.</p> <p>14 Q. Correct.</p> <p>15 MR. HINE: Could we see one of those documents?</p> <p>16 Q. It's under tab M91 of your book.</p> <p>17 A. Yep.</p> <p>18 Q. And you recognize the covering e-mail as an e-mail</p> <p>19 forwarding from Michael Evans to several other people on</p> <p>20 September 23rd an update chart that you prepared, right?</p> <p>21 A. Yes. I prepared that document.</p> <p>22 Q. Michael Evans is your boss, correct?</p> <p>23 A. Michael Evans was my direct line manager and the</p> <p>24 recipients of the executive committee at Barclays Capital.</p> <p>25 Q. Okay. So you -- and if we turn to the next page, we'll</p>

<p style="text-align: right;">Page 54</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And there's no bonus payment included in the next block</p> <p>4 for those people there. They're not -- Barclays isn't expected</p> <p>5 to pay them a bonus, right?</p> <p>6 A. They would be eligible for severance.</p> <p>7 Q. They would get severance not a bonus, correct.</p> <p>8 A. Yes. But as I mentioned before, oftentimes when you're</p> <p>9 negotiating a settlement of severance, there will be some</p> <p>10 consideration of prior year bonus and that may or may not be</p> <p>11 included in the final settlement amount.</p> <p>12 Q. But you're not -- aside from that distinction, those</p> <p>13 people are entitled to severance in Barclays' view but not a</p> <p>14 bonus, correct?</p> <p>15 A. They would be eligible for severance in the plan</p> <p>16 redundancy, yes.</p> <p>17 Q. Right. And if we look down at Footnote 1 -- well, before</p> <p>18 we get to Footnote 1, that leaves a total of about 6700 some</p> <p>19 odd people. And the plan at that point was to pay them an</p> <p>20 aggregate amount of 538 million dollars in bonus, correct?</p> <p>21 A. That's not the plan. That's just a simple mathematical</p> <p>22 calculation. You have to read this document in its entirety</p> <p>23 because it required a plan at this time. But the reference</p> <p>24 point of 1.4 billion of bonus was clearly insufficient to</p> <p>25 deliver the kind of compensation plans that Barclays had in</p>	<p style="text-align: right;">Page 56</p> <p>1 the moving" -- I'm sorry. I can't read it myself. "Still</p> <p>2 moving and a net of an expected 3300 redundancies expected to</p> <p>3 cost about a hundred million. Not funded out of the 2008 bonus</p> <p>4 pool." You see that?</p> <p>5 A. Yes.</p> <p>6 Q. So the funding for the severance was coming out of a</p> <p>7 separate pool from the bonus pool, right?</p> <p>8 A. I think what I'm referring to here is the 1.4 billion --</p> <p>9 Q. Right.</p> <p>10 THE COURT: -- which is described here as "Pool</p> <p>11 Funding".</p> <p>12 Q. Right. So the --</p> <p>13 A. So it's not coming out of that 1.4 billion --</p> <p>14 Q. The hundred million --</p> <p>15 A. -- that's being used for this chart.</p> <p>16 Q. Right. The expectation, at least at the time you prepared</p> <p>17 this chart was that the 3300 people would get a hundred million</p> <p>18 dollars in aggregate in severance, correct?</p> <p>19 A. They would have -- that's what it says.</p> <p>20 Q. Right. And that is separate and apart from the 1.4 that's</p> <p>21 in this bonus pool for a bonus, correct.</p> <p>22 A. It's separate to this reference point, yes.</p> <p>23 Q. Right. So this chart maps an expectation of having to pay</p> <p>24 a total of 1.5 billion dollars in severance and bonus, correct?</p> <p>25 If you add the one hundred to the 1.4 billion, I get to 1.5</p>
<p style="text-align: right;">Page 55</p> <p>1 fact at the time. If you turn the page to page 2, there's a</p> <p>2 sensitivity analysis section which identifies that issue</p> <p>3 further and suggests that we're between 270 and 370 million</p> <p>4 dollars lacked on the 1.4 billion reference point.</p> <p>5 Q. Okay. So the reference point that you're using is what's</p> <p>6 entitled "Total Pool Funding of Hours". Do you see that?</p> <p>7 A. I see that, yes.</p> <p>8 Q. And that's 1.4 billion?</p> <p>9 A. That's what it says.</p> <p>10 Q. Correct? And that's the number you were given by Mr.</p> <p>11 Evans?</p> <p>12 A. That was the reference point Mr. Evans asked me to use for</p> <p>13 that chart.</p> <p>14 Q. Mr. Evans is your boss?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And so, according to this chart, there was a pool</p> <p>17 available of 1.4 billion to pay bonuses, 862 million of which</p> <p>18 was going to go to the 402 most senior people. And the balance</p> <p>19 would be left to be divided up against the 6700 others,</p> <p>20 correct?</p> <p>21 A. Taken in isolation, that's what it says. Again, you have</p> <p>22 to read the document to put it in full context.</p> <p>23 Q. I -- we'll get there. And before we get there, let's talk</p> <p>24 about Footnote 1. You say in Footnote 1 that this is -- and</p> <p>25 this is in relation to the residual pool of people left. "All</p>	<p style="text-align: right;">Page 57</p> <p>1 billion dollars, right?</p> <p>2 A. If you do the mental arithmetic, that's what this chart in</p> <p>3 isolation says. However, I would say that as this document</p> <p>4 clearly identifies, at the time, we were very clear. This went</p> <p>5 to the executive committee at Barclays Capital. The 1.4</p> <p>6 billion reference point was going to be insufficient to the</p> <p>7 tune of 270 to 370 million dollars as modeled to deliver the</p> <p>8 kind of compensation that Barclays in fact wanted to do.</p> <p>9 Q. Wanted to do?</p> <p>10 A. Well, was planning to do in terms of the target as</p> <p>11 specified in this document.</p> <p>12 Q. Well, so you're referring further down on this page to the</p> <p>13 funding pressures that you highlight that are putting pressure</p> <p>14 on the original bonus pool estimate of 1.4 billion, is that</p> <p>15 right?</p> <p>16 A. That's it.</p> <p>17 Q. And the rest of this memo is to highlight the executive</p> <p>18 committee, the fact that we might blow the 1.4 pool, correct?</p> <p>19 A. That's what this document is intended to demonstrate. And</p> <p>20 my personal opinion was that we were going to substantially</p> <p>21 exceed the 1.4 billion which is, in fact, what we did.</p> <p>22 Q. Okay. Now you were told to use this 1.4 billion dollar</p> <p>23 pool by your superiors, correct?</p> <p>24 A. That's correct, as a reference point.</p> <p>25 Q. Okay. And that is on or before September 23rd, 2008 you</p>

<p style="text-align: right;">Page 70</p> <p>1 Q. Okay. Now this five billion (sic) explains the difference 2 between Barclays' brief where they used the 1.946 number and 3 your chart which is 1.951, isn't that right? 4 A. Mathematically, that's the case. I don't know whether 5 that's the reason. 6 Q. Okay. Fair enough. Let's move on to the next item on the 7 chart. I think you testified yesterday about replacement RSUs. 8 Those are, in fact, Barclays' assuming a stock bonus obligation 9 that Lehman previously owed, right? 10 A. A portion thereof, yes. And we replaced them with cash. 11 Q. Okay. Now the next item is "Bonus including social tax". 12 Do you see that? 13 A. I do. 14 Q. So a portion of that is bonus and a portion of that is a 15 tax, right? 16 A. Relevant taxes, yes. 17 Q. Okay. And you would agree with me that those tax payments 18 were paid to some tax authority not to the individual employees 19 themselves, correct? 20 A. That would be the case. 21 Q. Okay. And -- 22 A. They are clearly bonus related. 23 Q. Excuse me? 24 A. They're clearly bonus related. 25 Q. Sure.</p>	<p style="text-align: right;">Page 72</p> <p>1 A. So in that sense, it's not really different. 2 Q. I understand. I'm just saying the taxes were not paid to 3 the individuals themselves. They were paid to a taxing 4 authority, correct? 5 A. That's correct. 6 Q. All right. Next you have IBD grad programs which is again 7 just Barclays assuming a bonus type obligation that Lehman used 8 to owe, correct? 9 A. Yes. 10 Q. Okay. Now you see two entries for severance. The first 11 one is 238 million dollars. You see that? 12 A. Yes. 13 Q. And that's with respect to two different reduction in 14 force exercises that took place at properties, right? 15 A. Yes. 16 Q. And that's in reference on the right as RIF and VIG are 17 two different reduction in force programs? 18 A. Yes. One was in Q4 2008 and one was in Q1 2009. 19 Q. So the RIF is in the fourth quarter of '08? 20 A. I think so. I can't recall the specific -- I mean, RIF 21 stands for reduction in force, clearly. VIG -- I have no idea 22 what that stands for. 23 Q. Okay. But VIG is in the first quarter of '09, correct? 24 A. It's one or the other. I'm sorry I'm -- 25 Q. One of them --</p>
<p style="text-align: right;">Page 71</p> <p>1 A. They're related specifically to these bonuses. 2 Q. The bonus was paid to the individuals but the tax was paid 3 to a taxing authority, correct? 4 A. That's the norm. 5 Q. Okay. And at your deposition, you estimated the amount of 6 social tax embodied in that to be about fifty million dollars, 7 right? 8 A. I recall that it's quite low given the low social taxes in 9 the U.S., yes. 10 Q. Do you think it might be higher than that? 11 A. No. 12 Q. Okay. So it's about fifty million dollars? We can agree 13 on that? 14 A. That's what I estimated in my deposition. I have no 15 reason to change that. 16 Q. Okay. And like any -- so we don't have to go through all 17 the taxes, all the tax entries on here were paid to a tax 18 authority and not to the individual employees themselves, 19 right? 20 A. That's correct, although I would say that any cash bonus 21 paid to any employees are subject to any withholding tax at any 22 point in time -- 23 Q. Sure. 24 A. -- and payable to any tax authority. 25 Q. Sure.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. One of them is Q4 and one of them is Q1 2009. 2 Q. Okay. And if we turn back to Section 9.1(b) -- 3 (Pause) 4 Q. -- you'll agree with me that Section 9.1(b) provides for 5 the payment of severance for employees who -- for the period 6 from the closing up until December 31st, 2008, right? 7 A. It references the date December 31st, 2008, correct. 8 Q. So it doesn't apply to the reduction in force the 9 following year, does it? 10 A. I don't know what this applies to. 11 Q. Okay. 12 MR. HINE: Let's go back to the chart, please? 13 Q. Now, in any event, this severance payment, when that 14 severance payment is calculated, it's calculated in reference 15 to the severance program that was in place at Lehman before 16 these folks came over to Barclays, right? 17 A. Believe so, yes. 18 Q. Yes. Okay. But you have no real understanding, I think 19 you said -- or at your deposition, you have no real 20 understanding how this severance payment relates to 9.1(c) and 21 the obligations under 9.1(c) of the APA. Is that fair to say? 22 A. I have no understanding -- I had no understanding of what 23 9.1(c) obligates Barclays to do or not. 24 Q. Okay. And the same would be true of the severance 25 payment, the twenty-seven million and future severance</p>

<p style="text-align: right;">Page 74</p> <p>1 payments, right?</p> <p>2 A. Sorry. I don't understand your question.</p> <p>3 Q. Well, the next entry is twenty-seven million in severance</p> <p>4 payments that had not been paid at the time you prepared this</p> <p>5 chart, right?</p> <p>6 A. Yes. The June payroll hadn't as yet physically been paid.</p> <p>7 Q. Okay. And same question, you would not -- you have no</p> <p>8 understanding of how that severance payment relates to the</p> <p>9 obligations of 9.1(c) under the APA, correct?</p> <p>10 A. No. I have no idea what --</p> <p>11 Q. Okay.</p> <p>12 A. -- had no idea what 9.1(c) obligates us to do.</p> <p>13 Q. Okay. And if we wanted to compare these severance numbers</p> <p>14 to Barclays' brief excerpt that we saw, I'd add up 238 and 27</p> <p>15 and I would come to 265 million in total severance that</p> <p>16 Barclays has paid, right?</p> <p>17 A. That total is 265, yes.</p> <p>18 Q. Right. So your numbers agree with the excerpt from the</p> <p>19 brief that we looked at.</p> <p>20 A. They appear to, yeah.</p> <p>21 Q. Yes. Okay. Next is an item, a tax item. We've talked</p> <p>22 about that. That's another payment to a tax authority,</p> <p>23 correct? Nine billion?</p> <p>24 A. I believe so, yes.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. That's correct. In fact, he's received the one on</p> <p>2 February 2010.</p> <p>3 Q. Okay. And he was going to get the balance -- the thirteen</p> <p>4 million was --</p> <p>5 A. He received that as well.</p> <p>6 Q. He's received that as well?</p> <p>7 A. Correct.</p> <p>8 Q. And was paid on February 2010, correct?</p> <p>9 A. It was delivered to him in whatever form outstanding</p> <p>10 delivery parcel. But, yes, he received value to that effect.</p> <p>11 Q. Okay. And in connection with this assuming this contract,</p> <p>12 Barclays retained the right to reduce these amounts if he</p> <p>13 traded poorly, correct?</p> <p>14 A. In general, yes.</p> <p>15 Q. So if he accumulated a lot of losses in his trading,</p> <p>16 Barclays could reduce those twenty million dollars payment by,</p> <p>17 I believe you testified, up to ten million dollars, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. So at least in part, you would agree that Barclays'</p> <p>20 willingness to pay that fifty-three million dollars depended on</p> <p>21 his performance after he went to Barclays, correct?</p> <p>22 A. We committed to this fifty-three million dollars</p> <p>23 contractually to pay to Mr. Hoffman. Delivery thereof was</p> <p>24 contingent on -- delivery of a portion thereof was contingent</p> <p>25 on future performance.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Or just to clarify, they may or may not have those yet</p> <p>2 been paid. It depends on the timing of the actual payments to</p> <p>3 the tax authority and, in fact, the value of that tax payment -</p> <p>4 -</p> <p>5 Q. Okay.</p> <p>6 A. -- is -- depends on when the equity actually vests, I</p> <p>7 believe.</p> <p>8 Q. Okay. The next items is a fifty-three million dollar</p> <p>9 position buyout investing over two years. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And that relates to one individual trader who came from</p> <p>12 Lehman to Barclays, right?</p> <p>13 A. That's correct.</p> <p>14 Q. Mr. Hoffman?</p> <p>15 A. Correct.</p> <p>16 Q. And Mr. Hoffman had a contract with Lehman. It's a</p> <p>17 performance based contract where he would make x amount of</p> <p>18 dollars depending on how well he traded, right?</p> <p>19 A. That's reasonably fair to say.</p> <p>20 Q. And Barclays assumed that contract so now he does that</p> <p>21 work for Barclays, right?</p> <p>22 A. Barclays issued him with a similar contract.</p> <p>23 Q. Okay. And at the time you were preparing this chart, you</p> <p>24 expected him to receive twenty million dollar tranches, one of</p> <p>25 February of 2010 and one of February of 2011, correct?</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. So ten million dollars on two different tranches, at least</p> <p>2 a substantial portion of it, is contingent on how well he</p> <p>3 performs after he moves to Barclays, isn't that right?</p> <p>4 A. Those -- the twenty million tranches were subject to that</p> <p>5 reduction under the contract, yes.</p> <p>6 Q. Right. So that's --</p> <p>7 A. Well, as I've stated, he's received the first twenty.</p> <p>8 He's received the thirteen. And in fact, he's on track to</p> <p>9 receive --</p> <p>10 Q. Okay. That wasn't my question, Mr. Exall.</p> <p>11 A. I'm just giving --</p> <p>12 Q. But the question is Barclays assumed that contract.</p> <p>13 Barclays' willingness to pay the fifty-three million dollars in</p> <p>14 total was at least in substantial part dependant on how well he</p> <p>15 traded when he went to Barclays, correct?</p> <p>16 A. The fifty-three million dollars that we had committed to</p> <p>17 were subject to -- a certain portion thereof was subject to</p> <p>18 future performance.</p> <p>19 Q. And it's also contingent on the fact that he has to stay</p> <p>20 at Barclays till February of 2011, right?</p> <p>21 A. I can't recall the exact interpretation of the contract</p> <p>22 but if that's what it says then, in general, that's probably</p> <p>23 the case.</p> <p>24 Q. Well, let's --</p> <p>25 A. For certain awards you receive in stock or something,</p>

<p style="text-align: right;">Page 78</p> <p>1 there are vesting conditions that are required. Some of them 2 require service. I can't recall exactly the specifics of Mr. 3 Hoffman's replacement contract. 4 Q. Okay. Let me direct your attention to page 135 of your 5 deposition. 6 A. Okay. 7 Q. I'm sorry. It's page 136. I apologize. 8 A. Okay. 9 Q. Starting at line 9, we're talking about Mr. Hoffman's 10 arrangement. The question is: 11 "Barclays' willingness to pay that is contingent at least 12 in substantial part on how well he performs for Barclays 13 thereafter, correct?" 14 "A. That is correct as well as Mr. Hoffman being in employment 15 with Barclays at the time." 16 Is that the testimony you gave at your deposition? 17 MR. BOIES: Your Honor, for context, could we have the 18 next question and answer, please? 19 THE COURT: Let's do that. 20 MR. HINE: Sure, Your Honor. 21 Q. The following question says: 22 "Okay. So he has to stay an employee at Barclays at least 23 through the third payment?" 24 "A. I don't know that for certain. Again, I can't interpret 25 the specific leaving clauses or termination clauses under his</p>	<p style="text-align: right;">Page 80</p> <p>1 A. He certainly didn't receive certain payments until that 2 time. But it's -- again, I don't really know what this clause 3 means, but it does say "shall be awarded". 4 Q. Yes. 5 A. And he was given a contract with those terms inside it. 6 Q. He didn't get the money until February of 2010, is that 7 right? 8 A. In certain instances, yes. 9 Q. As to the ones we were just talking about, right? 10 A. That's correct, although I would go on to say that certain 11 individuals -- well, under normal stock programs they're 12 given -- people are given awards of stock. They don't 13 necessarily receive the cash value before the 15th of March 14 2009. But they may well have received the actual reward value 15 in a letter. 16 Q. Okay. Can we go back to your chart? And just one point 17 of clarity. Mr. Hoffman, in addition to this fifty-three 18 million dollar entry, he also received a bonus that falls 19 within the 1.529 number further up, correct? 20 A. That's correct. 21 Q. So he received both a bonus within that category of 22 payments and a separate contractual performance based contract, 23 right? 24 A. He received an amount embodied in the 1.529 number. And 25 he received awards for the value of fifty-three million dollars</p>
<p style="text-align: right;">Page 79</p> <p>1 agreement. But in general, that's, you know, I would say, it's 2 based on future time served criteria as well as trading 3 performance." 4 That was your testimony -- 5 A. That's what I said. 6 Q. -- at your deposition, right? 7 A. That's what I said. 8 Q. And that's still a true statement? 9 A. I believe so. 10 Q. Okay. Let's go back -- refer back to paragraph 9.1(c) 11 once more. 12 (Pause) 13 Q. You'll see in that paragraph, about the seventh or eighth 14 line down, Mr. Exall, it says, "Such annual bonuses shall be 15 awarded on or before March 15th, 2009." You see that? 16 A. That's what it says. 17 Q. You would agree with me that the payments Mr. Hoffman 18 received were well after March 15th, 2009, is that right? 19 A. Which payments? 20 Q. The payments that he was to receive in February of 2010 21 and February of 2011. 22 A. He received a contract for March 15th, 2009 and we 23 stipulated Barclays' obligations under that contract. 24 Q. Right. But his payments he didn't receive until February 25 of 2010 or February of 2011, correct?</p>	<p style="text-align: right;">Page 81</p> <p>1 as stipulated on the schedule. 2 Q. Okay. And following that fifty-three number, you'll see 3 there's a payroll tax associated with his payments, is that 4 right? 5 A. I believe so, yeah. 6 Q. Okay. And then the last large item is ISP awards. Do you 7 see that? Fifty-six million? 8 A. Yes. 9 Q. Now, as I understand it, those are shares of stock, the 10 stock bonuses that Barclays paid to employees to compensate 11 them for the fact that they did not receive their normal bonus 12 in March but rather received it in May, is that right? 13 A. I wouldn't categorize it that way, no. 14 Q. Okay. Well, let me try to break it down. The normal 15 practice at Barclays would be to pay stock awards in March, 16 correct? 17 A. The normal practice for Barclays is to make awards to 18 individuals and communicate their compensation in late 19 February, make cash payments and then make stock awards related 20 to those in March having purchased the stock on an open market. 21 Q. Okay. And for some reason, 2009 -- those awards were paid 22 in May instead of March, right? 23 A. I do recall there was a delay. 24 Q. Okay. And this is to compensate the recipients of those 25 awards for the fact that Barclays stock appreciated in value in</p>

<p style="text-align: right;">Page 82</p> <p>1 that interim period, right?</p> <p>2 A. That's correct. The amount of stock units that they would</p> <p>3 have received in May would have been substantially lower than</p> <p>4 the amount of stock units they would have received in March.</p> <p>5 In March, people were told the dollar value of the awards they</p> <p>6 were going to get in stock. But they would have received a</p> <p>7 substantially higher number of units in March.</p> <p>8 Q. Right.</p> <p>9 A. In May, given the share price appreciation, they would</p> <p>10 receive substantially fewer stock units. Consequently, this</p> <p>11 award is directly related to the original value of the stock</p> <p>12 awarded and it's to compensate them in part for the loss of</p> <p>13 value in the sense that they would have gotten fewer stock</p> <p>14 units.</p> <p>15 Q. I understand it's related to their original awards but</p> <p>16 it's --</p> <p>17 A. It's directly related to the original awards.</p> <p>18 Q. -- it's payment to compensate them for the fact that</p> <p>19 Barclays' normal procedures weren't followed and they were paid</p> <p>20 several months later, isn't that right?</p> <p>21 A. No. People got awards of value in March as a normal</p> <p>22 course of business.</p> <p>23 Q. Right.</p> <p>24 A. They were not told the amount of stock units they</p> <p>25 received until later.</p>	<p style="text-align: right;">Page 84</p> <p>1 Boies.</p> <p>2 MR. BOIES: Thank you, Your Honor.</p> <p>3 REDIRECT EXAMINATION</p> <p>4 BY MR. BOIES:</p> <p>5 Q. Good morning, Mr. Exall.</p> <p>6 A. Good morning.</p> <p>7 Q. Counsel asked you a number of questions about a</p> <p>8 conversation that you had with Mr. Guarnuccio. And he took you</p> <p>9 through the fact that you were not present even in New York</p> <p>10 when the APA was signed. Is that correct?</p> <p>11 A. I wasn't in New York till the 22nd -- or 21st of</p> <p>12 September.</p> <p>13 Q. Of September?</p> <p>14 A. Yeah. I don't know when the APA was actually signed.</p> <p>15 Q. And you spoke to Mr. Guarnuccio shortly after arriving in</p> <p>16 New York in September of 2008, is that correct?</p> <p>17 A. I recall it being at or around the time. I can't be</p> <p>18 precise about the date. I don't -- I couldn't find it in my</p> <p>19 diary and I have no notes of the meeting.</p> <p>20 Q. You don't have any reason to doubt Mr. Guarnuccio's</p> <p>21 statement that it was in September of 2008, correct?</p> <p>22 A. No.</p> <p>23 Q. And at the time you spoke to Mr. Guarnuccio, this was when</p> <p>24 you were just beginning to examine the bonus and severance</p> <p>25 issues, is that correct?</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Right.</p> <p>2 A. And this is to compensate them for the fact that they, in</p> <p>3 May, doing a mathematical calculation based on the strike price</p> <p>4 that we would have received in having hedged or purchased the</p> <p>5 shares on the market, they would have received fewer shares</p> <p>6 than they otherwise would have received. It's directly related</p> <p>7 to the value of the stock awards made at the time.</p> <p>8 Q. But it's due to the -- it's paid due to the fact that</p> <p>9 their normal process wasn't followed that year, right?</p> <p>10 A. For various reasons, yes.</p> <p>11 Q. Right. Okay.</p> <p>12 MR. HINE: Your Honor, I have nothing further.</p> <p>13 THE COURT: Do you have any redirect?</p> <p>14 MR. BOIES: Excuse me, Your Honor?</p> <p>15 THE COURT: Do you have any redirect?</p> <p>16 MR. BOIES: I do, Your Honor.</p> <p>17 THE COURT: About how long do you think you might be,</p> <p>18 Mr. Boies?</p> <p>19 MR. BOIES: I would say certainly much less than the</p> <p>20 cross. I would say maybe thirty, forty minutes. I think we</p> <p>21 should take a break at this point. It's ten after 11. Let's</p> <p>22 resume at twenty after 11.</p> <p>23 MR. BOIES: Thank you, Your Honor.</p> <p>24 (Recess from 11:10 a.m. until 11:29 a.m.)</p> <p>25 THE COURT: Be seated, please. Please proceed, Mr.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Yes. This was at the beginning of my work associated with</p> <p>2 the sale, yes.</p> <p>3 Q. Now, Mr. -- counsel gave you a copy of Movants' Exhibit 2.</p> <p>4 And that's in the book that they gave you. This is the</p> <p>5 schedule that is initialed by Mr. Berkenfeld?</p> <p>6 A. Yes.</p> <p>7 Q. And is there any place on this schedule that references</p> <p>8 bonus payments?</p> <p>9 A. Not that I can see.</p> <p>10 Q. There is a reference to comp, is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. And you understand that to mean compensation, correct?</p> <p>13 A. That would be my interpretation of that.</p> <p>14 Q. And that shows a total for compensation of two billion</p> <p>15 dollars, is that correct?</p> <p>16 A. That's what it seems to show.</p> <p>17 Q. And as you use the terms, "comp" and "compensation" as an</p> <p>18 HR person, does that include severance as well as bonuses?</p> <p>19 A. Absolutely. Compensation encompasses all forms of award</p> <p>20 and compensation for services rendered including bonus,</p> <p>21 severance, annual, long term incentive awards if necessary,</p> <p>22 stock awards, benefits, monthly salary, all sorts of</p> <p>23 compensation.</p> <p>24 Q. Now you were shown some materials from our brief in the</p> <p>25 trial record. I'd like to show you a couple of pieces also.</p>

<p style="text-align: right;">Page 86</p> <p>1 Do you happen to know who Mr. McDade is?</p> <p>2 A. I don't know him personally but I know who he is.</p> <p>3 Q. And he was the lead negotiator for Lehman in this sales</p> <p>4 transaction. Were you aware of that?</p> <p>5 A. I have heard that.</p> <p>6 Q. Let me show you some testimony that Mr. McDade gave at</p> <p>7 this trial, the official trial transcript of April 26th, 2010</p> <p>8 at page 160. And this -- in particular, I want to go to line</p> <p>9 24 and the question that carries over to the next page. And</p> <p>10 I'd like you to look at this on the screen:</p> <p>11 "Q. The other part of that question had to do with</p> <p>12 compensation, sir.</p> <p>13 A. Right. Barclays also assumed a two billion dollar</p> <p>14 compensation liability with respect to the combination of the</p> <p>15 employees' bonus process and the severance process."</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Did you come across anything in your work that was</p> <p>19 inconsistent with that?</p> <p>20 A. Well, I believe so.</p> <p>21 Q. Now, going back just for a moment to Movants' Exhibit 2,</p> <p>22 it's initialed up in the right-hand corner. Do you know whose</p> <p>23 initials those are?</p> <p>24 A. No, I don't.</p> <p>25 Q. Didn't anyone ever tell you that was Mr. Berkenfeld? Yes</p>	<p style="text-align: right;">Page 88</p> <p>1 inconsistent with that.</p> <p>2 Q. Let me ask you to look at page 38 of your deposition. And</p> <p>3 you will recall that counsel asked you some questions about</p> <p>4 that and directed your attention to the testimony at the top of</p> <p>5 the page. And you said in your answer, yes, you had testified</p> <p>6 as he indicated at the top but there was also some testimony at</p> <p>7 the bottom that you thought was relevant?</p> <p>8 A. Yes.</p> <p>9 Q. And I'd like to now give you a chance to look at that</p> <p>10 portion at the bottom beginning at line 17 to 24:</p> <p>11 "Q. What did Mr. Clarkson (sic) tell you about that schedule?</p> <p>12 "A. I don't recall what he told me about it. I asked for a</p> <p>13 copy of it as part of my own reading of the relevant sections</p> <p>14 of the APA."</p> <p>15 And did you give that testimony also at the time?</p> <p>16 A. Yes, I did.</p> <p>17 Q. Let me ask you to look next at Movants' Exhibit 801 that</p> <p>18 is in the book that counsel gave you. And you'll recall that</p> <p>19 counsel asked you about the e-mail at the bottom of the page</p> <p>20 which was from James Walker to you with a copy to Gary Romaine</p> <p>21 dated November 3, 2008.</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall that? And where he is requesting a copy of</p> <p>24 the schedule that I think we've identified as Movants' Exhibit</p> <p>25 2. And he says that -- or James says that there is a request</p>
<p style="text-align: right;">Page 87</p> <p>1 or no?</p> <p>2 A. Not during the process.</p> <p>3 Q. Okay.</p> <p>4 A. I happened to be --</p> <p>5 Q. There's some testimony in the record that this was Mr.</p> <p>6 Berkenfeld's initials.</p> <p>7 A. Okay.</p> <p>8 Q. And I ask you to assume that just for the moment. And let</p> <p>9 me show you -- and the cure and comp number totals 4.2 billion</p> <p>10 dollars, correct? 4.25 billion dollars?</p> <p>11 A. That's correct.</p> <p>12 Q. Let me show from the official trial transcript, June 21st,</p> <p>13 2010. This is Mr. Marsal's testimony at lines 9 through 14 of</p> <p>14 page 45:</p> <p>15 "Q. Was it your understanding in October of 2008 that the</p> <p>16 assumed cure liability that is listed here and the assumed</p> <p>17 severance liability that was listed here together added up to</p> <p>18 4.2 billion dollars?</p> <p>19 A. That was my assumption based on the conversation with</p> <p>20 Steven Berkenfeld, yes."</p> <p>21 And did you find anything in your work that was</p> <p>22 inconsistent with the inclusion of severance in that 4.2</p> <p>23 billion dollars?</p> <p>24 A. If severance -- well, no. No, I didn't. If these are the</p> <p>25 references you're making then, no, I don't see anything</p>	<p style="text-align: right;">Page 89</p> <p>1 for a copy of the schedule that shows the two billion bonus</p> <p>2 liability to Lehman folks. Do you recall that?</p> <p>3 A. I see that there.</p> <p>4 Q. Now when you reply to that, you don't use the term</p> <p>5 "bonus", correct?</p> <p>6 A. No, I didn't.</p> <p>7 Q. In fact, when you replied to that, which is the middle e-</p> <p>8 mail on the same exhibit, you say "Here is a scanned copy. You</p> <p>9 will see the two billion dollars described as 'comp'." Do you</p> <p>10 see that?</p> <p>11 A. I do.</p> <p>12 Q. And why did you do that?</p> <p>13 A. I wanted to be precise about what I saw in the schedules</p> <p>14 that have been given to me from Finance in relation to</p> <p>15 Clause -- Article 9. And I'm very careful, generally, to use</p> <p>16 precise terms. I realize that there is oftentimes confusion</p> <p>17 when dealing with noncomp professionals. For example, in my</p> <p>18 day-to-day, I deal with finance people all the time. They'll</p> <p>19 use colloquialisms. And in the comp world, certain things mean</p> <p>20 certain things to different people. So I try to be as precise</p> <p>21 as I can when answering the question.</p> <p>22 Q. Let me ask you to look next at Movants' Exhibit 91 which</p> <p>23 was another exhibit that counsel showed you.</p> <p>24 A. Yes.</p> <p>25 Q. And you said in response to a couple of questions that the</p>

<p style="text-align: right;">Page 90</p> <p>1 1.4 billion dollar reference number was believed this time to 2 be insufficient. And I'd like to give you a chance to explain 3 what you meant by that. 4 A. The 1.4 billion dollars was given to me as a reference 5 point for the chart on the first page of this attached 6 document, summary report. If you turn to the second page, we 7 are looking at sensitivity analysis around that number. And 8 what we were trying to understand is with that reference point 9 and the guaranteed contracts that had been written and issued 10 to people at the time, what would the impact be on the residual 11 population that are not being guaranteed at that time. 12 Our target was to deliver in an aggregate for those people 13 without guarantees sixty-five percent of their 2007 total bonus 14 in 2008. And the sensitivity analysis that we performed at 15 this time almost from day 1 indicated that the residual amount 16 available for those nonguaranteed people was at least 270 17 million dollars short on the model basis. And if you adjust it 18 for people that may have received a zero bonus in 2007 and it 19 should be normalized in the normal course of events, you could 20 add another seventy-five to a hundred million dollars on top of 21 that. 22 So at this time, we were realizing that the 1.4 billion 23 dollar reference point was at least -- was anywhere between, on 24 a model basis, 270 and 370 million dollars short. 25 Now this is a bonus model only. It excluded, as you see</p>	<p style="text-align: right;">Page 92</p> <p>1 disadvantages to the second last one, we were referencing the 2 fact that a finite pool, which is the 1.4 billion dollar 3 reference point, would mean a furtherance of substantial 4 squeeze on nonguaranteed people and lead to flight risk which 5 is what we were seeing at the time. And I think at this time, 6 we realized that 1.4 billion dollars was just not going to be 7 sufficient if we were going to address these concerns of the 8 business. 9 Q. Let me ask you -- incidentally, before I go on to the next 10 exhibit, in addition to the guaranteed -- the people you were 11 going to guarantee the bonuses to, was it the plan to give 12 bonuses to additional people? 13 A. Yes. People that were not issued guaranteed contracts 14 were eligible for compensation. 15 Q. And from the beginning, was it intended that some amount 16 of money would be spent on bonuses for pre-acquisition services 17 for former Lehman employees who were not given guarantee 18 contracts? 19 A. That's correct. The original targets, rules of the road 20 for wont of a colloquialism that we use, was to try and deliver 21 an aggregate to those people an amount equivalent to sixty-five 22 percent of their 2007 bonus. 23 Q. Okay. Now let me go on to Movants' Trial Exhibit 107 24 which is another version of an exhibit that I had used with you 25 during my examination yesterday. And in this connection,</p>
<p style="text-align: right;">Page 91</p> <p>1 on the front page, severances that may or may not be payable to 2 eligible employees as part of the redundancy program. 3 Q. Now, in that connection, I'd like to ask you to look at 4 Movants' Exhibit Trial Exhibit 145, which you were also asked 5 about. And in particular, go on to the second page and at the 6 bottom, under "Strawman Approaches", one of the strawman 7 approaches that you identified is to try to manage within the 8 overall 1.4 billion dollar number. Do you see that? 9 A. I see that. 10 Q. And you were asked about that. And there are a list of 11 risks or disadvantages to this. And there are several. And 12 counsel asked you about the very last one which was spending 13 more than one billion dollars is "dilutive to current negative 14 goodwill calculation". Do you see that? 15 A. More than 1.4 billion. 16 Q. Yes. And what I'd like to do is ask you about the very 17 first disadvantage of the several that are listed here, not the 18 last one, which is "contrary to original principles". And can 19 you explain what you meant by that? 20 A. What I meant by that was there was an original plan to 21 issue guarantee bonus contracts to the top 175 to 200 people. 22 And we were going to go beyond that estimate. We were going to 23 issue guarantee bonus contracts to more than that given the 24 substantial pressures that we were under to retain staff and 25 solidify the franchise. I think if you continue on under those</p>	<p style="text-align: right;">Page 93</p> <p>1 counsel asked you a number of questions about taxes and payment 2 of taxes to tax authorities. Do you recall that generally? 3 A. Yes. 4 Q. Now, typically, if you pay a bonus to an individual, do 5 the taxing authorities require you to withhold a certain amount 6 of that bonus and pay it to the tax authorities? 7 A. In most tax jurisdictions, that's correct. 8 Q. And when you do that, is your belief that when you pay it 9 to the tax authorities, you're paying it on behalf of the 10 employee? 11 A. It will be their liability to the tax amount in that 12 jurisdiction, correct. And the employer is effectively acting 13 as a collection agent for -- 14 Q. And do you include the amount of the withholding that 15 you're paying to the tax authorities as part of what you 16 ordinarily consider to be the bonus that is being paid to the 17 individual? 18 A. Yes. That's the value that would be drawn to or awarded 19 to the individual, the gross number. 20 MR. BOIES: Your Honor, I have no more questions. 21 THE COURT: Is there anything more? 22 MR. HINE: No questions, Your Honor. 23 THE COURT: You're excused. Thank you. 24 THE WITNESS: Thank you, Your Honor. 25 MR. BOIES: Our next witness, Your Honor, is Mr.</p>

Exhibit 49

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (JMP)

Case No. 08-01420 (JMP) (SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

August 27, 2010

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 18</p> <p>1 A. No. To my knowledge, it was not at any point defined as a 2 balance sheet transaction. The transaction at the outset, 3 prior to bankruptcy, was the acquisition of a global business, 4 a substantial expansion of Barclays' global franchise in 5 capital markets, advisory wholesale banking. The transaction 6 that was attempted pre-bankruptcy was specifically, if you 7 will, to exclude elements of the balance sheet that was known 8 to be risky. The transaction that then was contemplated on the 9 Monday and Tuesday was specifically an attempt to acquire the 10 business as had been described to us, the North American 11 capital markets business. There was no sense of what, quote, 12 "balance sheet" may exist. 13 And the idea that one would step in Barclays with their 14 extremely strong business and put their complete business at 15 risk reputationally against this big announced expansion into 16 new business lines and a new geography, it was never -- well, 17 it was not described to me that it was ever contemplated as the 18 purchase of, quote, "a balance sheet" or a set of assets. 19 Q. Based on your understanding of the nature of Lehman's 20 records and what Lehman understood and could demonstrate about 21 its assets and liabilities, would it have been possible to have 22 a balance sheet transaction? 23 MR. GAFFEY: Objection, Your Honor. 24 THE COURT: What's the basis of the objection? 25 MR. GAFFEY: I think it goes beyond his fact</p>	<p style="text-align: right;">Page 20</p> <p>1 could or attempted to warrant any valuation. 2 Q. Was Lehman providing any warranty or representation or 3 guarantee of what its liabilities were? 4 A. I don't -- my apologies in that those are some more 5 specific legal terms. It's my understanding that there were 6 assumptions of specific liabilities as part of the overall 7 consideration. There was an estimate of two groupings of 8 formal liabilities, what was an estimate for compensation, an 9 estimate of a potential exposure for something called cure, 10 which I learned about, frankly, in this process; I hadn't been 11 aware of it before. There were ongoing expenses of doing 12 business, because this was an ongoing business and, with 10,000 13 employees, they would generate expenses, as by their nature. 14 There was clearly going to be potential exposure on a 15 commercial basis, not on a legal basis but for clients who 16 might have done business with Lehman who had just a concern 17 about some particular event. That was a potential, not 18 necessarily legal but commercial. 19 And of course there was a grouping of liabilities that 20 were the directly attributable liabilities attached to the 21 trading book, because the trading book, which were part of the 22 direct overall assets associated with the broker-dealer, was a 23 net book at the time of the transaction. It had hedged 24 positions, it had funding positions, as trading books, as I 25 understand, do. So those liabilities were part -- the ability</p>
<p style="text-align: right;">Page 19</p> <p>1 knowledge -- 2 (Coughing) 3 MR. GAFFEY: I beg your pardon. 4 It goes beyond factual knowledge and asks for an 5 opinion. 6 THE COURT: Well, he's asking the witness if it's 7 possible. And given this witness' involvement in the 8 transaction and the questions that have been asked to this 9 point about the nature of the financial information, including 10 his comment that this was not a balance sheet transaction, I'll 11 treat it as a lay opinion, if in fact it's an opinion at all. 12 And he can answer the question, but the answer is not likely to 13 be given very much weight. 14 A. The question of possible is -- it's a very big concept. I 15 don't believe at the time that there was an ability -- as I 16 understand a balance sheet, which is a full listing of assets 17 and a full listing of liabilities -- that anyone could have 18 delivered or that there was a possibility to deliver, in the 19 time frame we were working, the specific listing and the 20 specific valuation of each asset that was provided to us as I 21 understood it at the time. 22 Q. In connection with the transaction that was contemplated 23 and the transaction that was done, was Lehman guaranteeing the 24 value of any of the assets it was providing? 25 A. No, not that I'm aware of. I don't believe that Lehman</p>	<p style="text-align: right;">Page 21</p> <p>1 to guarantee what any of those particular liabilities were or 2 the totality of those liabilities, I'm not aware that was done. 3 Q. Was Lehman, as you understood it, guaranteeing that the 4 employees would stay with the business? 5 A. No, not that I'm aware of. I think that, as I understood 6 it, Barclays committed to give roles for a defined time period 7 to the employees. If they decided not to keep certain 8 employees, they would in fact terminate those employees and pay 9 them a severance. There were a certain group of employees that 10 I believe there was an attempt to negotiate agreements with; I 11 wasn't part of that. But I don't think Lehman did or could 12 guarantee that any individual employee or collective grouping 13 of employees could stay. 14 Q. Was Lehman guaranteeing that its customers and 15 counterparties would stay with the business as opposed to 16 taking their business elsewhere? 17 A. No, I don't believe that Lehman was making any 18 representations in terms of which clients existed and continued 19 to exist or could continue to exist. No, I'm not aware of 20 that. 21 Q. During the period of September 15th and 16th, what role 22 did you play in working with Lehman representatives to agree 23 upon a basic structure for the transaction? 24 A. The 15th and the 16th was the Monday, Tuesday. And as I 25 indicated, we got a call early in the morning at about, I</p>

Exhibit 50

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.
Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

August 31, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 34</p> <p>1 like. You want to know what it is you're buying and the more 2 information you have the better to have a sense of that. I 3 think Barclays -- you mentioned the press release that they 4 issued that showed that there was a positive difference between 5 the value of the trading assets and the trading liabilities. 6 And that was important -- it was very important to Barclays 7 given the markets that existed. We had seen this over the 8 Friday and over the prior weekend, that Friday, Saturday, 9 Sunday. It was important if Barclays was going to do this that 10 it appear to be knowing what it was doing in the public 11 environment and to its regulators and the like and that was all 12 important. So they cared on the assets. And Lehman, obviously 13 -- I mean, they were advised by Mr. Miller and others and 14 obviously with great expertise and they needed to have a sense 15 of value, as much information as they could to conclude 16 whether, in fact, this was in the best alternative available to 17 Lehman in terms of that there was no other bid and that they 18 wouldn't be better off liquidating the portfolio, et cetera. 19 So it was important to both sides, sure. 20 Q. Was there a lot of effort as you observed it by Barclays' 21 traders to value these assets in order to determine whether 22 there was a positive difference as you've defined it? 23 A. Yes. There were -- and as I said -- I testified earlier 24 there were a lot of rooms and a lot of things going on at one 25 point all over that Monday and Tuesday at Lehman Brothers on</p>	<p style="text-align: right;">Page 36</p> <p>1 marks that were on the Lehman -- in the Lehman portfolio. So 2 there was -- there were discussions of that sort. 3 I've rambled. I apologize, Your Honor. 4 Q. Well, that's all right, Mr. Lewkow. It's important. You 5 mentioned that there was an effort on the part of Barclays, if 6 not both parties, to understand what some of these trading 7 assets were at that point in the week. You mentioned, I think, 8 in your answer that there was some confusion about that. 9 Let me show you Exhibit 106 which has been referred to as 10 Mr. Berkenfeld's document, BCI 106. Do you recall seeing this 11 document during the negotiations? 12 A. Yeah. At some point, Mr. Berkenfeld came into the -- back 13 into the room -- or came into the room. We were close to 14 finalizing -- it was pretty late Tuesday night. I couldn't put 15 a time on it. But -- is there -- there may even be a time on 16 this document. But -- and -- 17 Q. There's a date in the upper right-hand corner handwritten. 18 It says September 16th. 19 A. Yeah. 9/16/08, yeah. It was that Tuesday -- and said 20 just want to make sure this is what we're talking about. These 21 are the categories of assets and liabilities we're talking 22 about. And at some point, he said, with a little bit of flare, 23 said let's initial it. So we know when he initialed it. 24 Q. Can you move the microphone just a bit closer to you -- 25 A. Oh, I'm sorry. I --</p>
<p style="text-align: right;">Page 35</p> <p>1 that one floor. And in one of the rooms there were traders 2 from both Lehman and Barclays who were going through the Lehman 3 portfolio. Those of us in the -- what I referred to earlier as 4 the corner lawyers' room, we'd get reports from time to time. 5 And both sides were in there. It was -- we were told that 6 there were differences, substantial differences in views as to 7 the appropriateness of the marks. Lehman -- there had been 8 lots of newspaper stories and other things for some months 9 suggesting that -- weeks, at least -- that suggested that maybe 10 Lehman had unrealistic marks on some of its portfolio. 11 Barclays was going through that. There were traders sitting 12 together, as I understood it. I may have walked past that room 13 at least once. But the -- and so that was going on. There was 14 also the question of even if they hadn't been overstated 15 previously whether they were stale with each passing day and 16 each passing hour and therefore overstated. And there was at 17 least, at one page, the story was reported in the room that I 18 was in, again, with lawyers from both sides present, and maybe 19 some businesspeople, in which it was mentioned as an example of 20 why the Barclays traders were dubious about the marks. There 21 was some security that Barclays had on its own -- in its own 22 portfolio that where Barclays had a senior tranche of the 23 security and had marked it at a lower percentage of nominal 24 value then Lehman had a junior tranche marked at. Well, that 25 certainly makes one dubious as to not only that mark but other</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. -- so His Honor can hear you. 2 A. -- came down with a cold last night. So I'm getting a 3 little bit of laryngitis. I apologize. 4 Q. Thank you. Don't hesitate to drink water. 5 A. I've gone almost through a bottle. 6 Q. Now, you had mentioned initialing the document. And you 7 see there that there are some initials below that signature. 8 Did this schedule include all of the purchased assets or all of 9 the assumed liabilities that Barclays was acquiring from 10 Lehman? 11 A. Well, it certainly didn't include all of the assets. It 12 was, at most, certain of the -- certain of the assets we 13 were -- we were buying all the assets except, as I said 14 earlier, except as expressly excluded. And even the specific 15 enumeration in the agreement of assets went beyond these kind 16 of purely financial assets. 17 Q. Mr. Lewkow, this exhibit which is in evidence has only one 18 individual signature on it. Did Barclays sign this document in 19 any way, put initials on it, do you know? 20 A. Not that I recall but I wouldn't swear to it one way or 21 the other. 22 Q. Well, let me ask you this, 'cause you are under oath -- 23 A. Yes, I know. That's why -- 24 Q. Did the lawyers for the parties discuss -- did you discuss 25 with Lehman's lawyers whether this document should be a part of</p>

<p style="text-align: right;">Page 38</p> <p>1 the APA or attached to the APA?</p> <p>2 A. Yes. There was a discussion. Someone suggested on the</p> <p>3 Lehman -- I think it was on the Lehman side. Someone</p> <p>4 suggested -- it might have been Mr. Berkenfeld, I just don't</p> <p>5 recall. Let's attach it as an exhibit or something along that</p> <p>6 line. And we said -- and I say "we" but I'm pretty sure it was</p> <p>7 me -- said no. This is -- we just spent the last thirty-six</p> <p>8 hours negotiating this thing, the asset purchase agreement. It</p> <p>9 lays out a whole bunch of aspects of this transaction. It</p> <p>10 can't be replaced by what this one page, which we haven't</p> <p>11 really audited and reviewed or anything -- and I don't want to</p> <p>12 attach it as an exhibit and sort of imply the entire asset</p> <p>13 purchase agreement should be interpreted as based on this</p> <p>14 document. I don't know what the implications of doing that</p> <p>15 would be and we're not prepared to do that. And it was</p> <p>16 dropped.</p> <p>17 Q. So did Mr. Miller --</p> <p>18 A. There was one mention made of this document, but --</p> <p>19 Q. Did Mr. Miller agree with you not to attach it to the APA?</p> <p>20 A. Yeah. As I said, somebody suggested -- might have been</p> <p>21 Mr. Berkenfeld, I don't recall. I gave my little speech. And</p> <p>22 it was totally dropped. This was not heavily negotiated or</p> <p>23 anything like that.</p> <p>24 Q. Did the figures that are set forth in this document change</p> <p>25 during the week as far as you know?</p>	<p style="text-align: right;">Page 40</p> <p>1 when we -- if there was a change, it went in in ink. And she</p> <p>2 had much better handwriting than I would have had. And those</p> <p>3 were the last minute changes. And there was -- somebody made</p> <p>4 the suggestion that to give some order of magnitude in the</p> <p>5 document, some sort of -- just to be helpful, it was useful to</p> <p>6 add that reference, the approximately seventy billion. And</p> <p>7 there's a similar language on the short positions,</p> <p>8 approximately sixty-eight or whatever the numbers -- I would</p> <p>9 have to look -- billion. And the person who originally -- and</p> <p>10 again, I don't remember who it was. The person who originally</p> <p>11 proposed adding words of that nature used the term "marks".</p> <p>12 And someone -- and again, it may have been me. I don't -- it</p> <p>13 could well have been. But somebody said well, "marks" isn't a</p> <p>14 very technical term. Don't we mean book value? And that's the</p> <p>15 words that we used in the document when it was written in hand.</p> <p>16 Q. Did the lawyers for the parties or, to your knowledge, the</p> <p>17 parties discuss whether the figures of approximately seventy</p> <p>18 billion and approximately sixty-nine billion were intended to</p> <p>19 be representations or warranties of approximate value?</p> <p>20 A. It was clearly not that, absolutely not.</p> <p>21 Q. Now, comparing the long positions as a purchased asset and</p> <p>22 a short -- the short positions that you've just outlined -- and</p> <p>23 you may have mentioned this earlier. Was there a buffer</p> <p>24 between the two?</p> <p>25 A. Well, it wasn't -- there was but it's not just that. I</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Everything changed constantly during the week. It was</p> <p>2 that kind of week, yes.</p> <p>3 Q. Now let me ask you about the reference in the APA to a</p> <p>4 book value. Do you recall the circumstances under which the</p> <p>5 words "with a book value as of the date hereof of approximately</p> <p>6 seventy billion dollars" was added to the description of the</p> <p>7 long positions in the APA?</p> <p>8 A. Yes. I know that -- Exhibit 4, which is what I'm</p> <p>9 looking -- or tab 4 which is whatever exhibit number it is</p> <p>10 that's in this book that you asked me to look at earlier.</p> <p>11 Q. It's BCI --</p> <p>12 A. When I looked at it --</p> <p>13 Q. -- Exhibit --</p> <p>14 A. -- the first thing I looked at is which version of the</p> <p>15 execution version was this included. The version I remember</p> <p>16 best was the one that had inked in changes that I know is the</p> <p>17 version we filed early hours of Wednesday morning because we</p> <p>18 were anxious to get it on file. And word processing those last</p> <p>19 minute changes would have possibly delayed things further. So</p> <p>20 we filed it and then it was refiled with the word processing</p> <p>21 changes made. One of -- those were last minute changes made as</p> <p>22 we all sat around the room. One of the young lawyers on the</p> <p>23 Lehman side of the table sat between me and one of the</p> <p>24 partners -- in fact, it was a Simpson Thacher partner and not a</p> <p>25 Weil partner but the Weil partners were also in the room. And</p>	<p style="text-align: right;">Page 41</p> <p>1 mean, there were other -- in the first place, again, there were</p> <p>2 other assets including nonfinancial assets. But there was</p> <p>3 also, as part of the financial assets, there were a number of</p> <p>4 other things that added to -- I don't know if at the time I</p> <p>5 used the word "buffer" but what I -- furthermore, it was a</p> <p>6 positive difference. It included the fact that in addition to</p> <p>7 the net long and net short positions you're referring to, we</p> <p>8 were -- Barclays was going to get in the so-called resis, the</p> <p>9 residential mortgage portfolio. And there was also the</p> <p>10 provision for the retained cash concept that was also, I</p> <p>11 believe, was in the APA for a billion two or a billion three</p> <p>12 that we were -- that Barclays was going to get.</p> <p>13 Q. So the retained cash estimated at a billion two or a</p> <p>14 billion three would add to the positive difference between the</p> <p>15 trading assets and the trading liabilities that you saw in the</p> <p>16 APA?</p> <p>17 A. Yes.</p> <p>18 Q. And these resis that you mentioned, do you recall hearing</p> <p>19 whether they had value as far as Lehman was concerned?</p> <p>20 A. Yes. Lehman thought -- I mean, in that environment,</p> <p>21 knowing what value anything was was hard. But Lehman thought</p> <p>22 it had very substantial value in -- well into the single digit</p> <p>23 billions. I don't remember if it was six or seven or eight or</p> <p>24 something. But they thought it had a substantial value and</p> <p>25 that over time might have a lot more value.</p>

Exhibit 51

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

- - - - -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.
Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

September 2, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 38</p> <p>1 Q. And had assumed other obligations and liabilities in the 2 sale transaction? 3 A. Yes. 4 Q. Let's flip back to tab 5, the third page. Just let me -- 5 I neglected to do one thing earlier. The document at tab 30, 6 which doesn't have any date or name on it, which is the 7 worksheet you prepared, or had prepared to determine how much 8 of the financial inventory was on Schedule B, was that work 9 done during this litigation? 10 A. Yes, it was, yes. 11 Q. And we produced it to the other side. Do you remember 12 roughly when? 13 A. I think it was maybe -- just maybe December 2009. 14 Q. Sometime during the litigation? 15 A. Yeah. 16 Q. It was -- as you said earlier, and just to be clear, in 17 the process that led up to the determination of the acquisition 18 balance sheet published in February 2009, did you or your team 19 of valuation professionals at product control group, make any 20 effort to distinguish between repo collateral and Schedule B 21 clearance box assets? 22 A. The first time I knew that the repo collateral was on the 23 balance sheets at 45.5 billion was when we performed this 24 analysis as part of the litigation. 25 Q. Well, while we're on that subject, just so it's clear,</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Is it plausible? 2 A. No. 3 Q. Let's go back to tab 5. Let's talk about the liabilities 4 now. 5 How much did Barclays accrue in compensation liabilities 6 to cover its obligations to pay bonuses and severance to Lehman 7 employees who came over to Barclays at the time of the 8 acquisition? 9 A. The accrual was two billion dollars. 10 Q. Can you show the Court where that is on the acquisition 11 balance sheet? 12 A. Yeah. It's the summation of two lines. So it's 1.7 13 billion is included in line 45 and 300 million included in line 14 52. 15 Q. Now, line 45 says bonus. Is it your understanding that 16 that number is only bonus or includes perhaps some cash bonus, 17 some cash severance? 18 A. It's my understanding that it includes bonus and 19 severance. 20 Q. And is the same true for line 52 where it says stock 21 element of bonus? Could it include both bonus and severance? 22 A. Yeah. 23 Q. And the reason the credit to equity line is not considered 24 a liability, is that just an accounting? Is that a function of 25 how it's accounted for?</p>
<p style="text-align: right;">Page 39</p> <p>1 believe it or not, at tab 45 of the binder, there's another 2 document with the number 45 on it. Could you go to it? It's 3 Movants' 147. This is a document produced from Jim Seery's 4 files. 5 Do you know who Jim Seery is or do you know him 6 personally? 7 A. No. 8 MR. HUME: Can we have the second page, please? We 9 need to go to page 0007. Okay. 10 Q. This document shows a list of categories of assets in the 11 fed repo. Is this a document you used at all in preparing the 12 acquisition balance sheet? 13 A. No. 14 Q. Had you seen it before this litigation? 15 A. No. 16 Q. See at the bottom it says 45.5? 17 A. Yup. 18 Q. Are you aware of the fact, given your work in reviewing 19 expert reports by movants and their briefs in defending those 20 experts, that the movants have suggested or stated or 21 insinuated that the reason your acquisition balance sheet has a 22 repo collateral value of 45.5 billion is to match that number? 23 A. Yeah, I'm aware of that, yeah. 24 Q. Is it true? 25 A. No.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yeah. It's purely an accounting classification item, if 2 we're expecting to settle a proportion in stock crop and cash, 3 then it's put into a different section of the balance sheet. 4 But it's still accrued and deducted as part of the negative 5 goodwill calculation. 6 Q. I believe the -- did Paul Exall help gather the 7 information of how much was actually spent for bonuses and 8 severance and associated payroll taxes? 9 A. Yes. 10 Q. And is the document at tab 13, the document he prepared to 11 assist you gathering that information, BCI Exhibit 142-A? 12 A. Yeah, that's it. 13 Q. And does it show a total of 1.951 billion? 14 A. Yes, it does. 15 Q. Can you explain why its total is 1.951 and you have a full 16 two billion on the acquisition balance sheet? 17 A. Well, the accrual in the acquisition balance sheet was our 18 best estimate of what we'd pay to settle the obligation. It 19 ended up being close to two billion, but slightly less. The 20 difference from a financial reporting perspective wasn't 21 especially material to go back and change the balance sheet 22 we'd already published. 23 Q. Let's go back to tab 5, to 133-B in the third page. And 24 can you show the Court here what was accrued on the acquisition 25 balance sheet for cure payment obligations?</p>

Exhibit 52

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

June 25, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p>Page 2</p> <p>- 2 -</p> <p>1</p> <p>2 CONTINUED EVIDENTIARY HEARING re (i) Motion of Debtor to Modify</p> <p>3 the September 20, 2008 Sale Order and Granting Other Relief;</p> <p>4 (ii) Motion of the Trustee for Relief Pursuant to the Sale</p> <p>5 Orders or, Alternatively, for Certain Limited Relief Under Rule</p> <p>6 60(b); (iii) the Motion of Official Committee of Unsecured</p> <p>7 Creditors of Lehman Brothers Holdings Inc., Authorizing and</p> <p>8 Approving (A) Sale of Purchased Assets Free and Clear of Liens</p> <p>9 and Other Interests and (B) Assumption and Assignment of</p> <p>10 Executory Contracts and Unexpired Leases, Dated September 20,</p> <p>11 2008 (and Related SIPA Sale Order) and Joinder in Debtors' and</p> <p>12 SIPA Trustee's Motions for an Order Under Rule 60(b) to Modify</p> <p>13 Sale Order; (iv) All Joinders Thereto and Related Adversary</p> <p>14 Proceedings; and (v) Motion of Barclays Capital Inc. to Enforce</p> <p>15 the Sale Order and Secure Delivery of All Undelivered Assets</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Transcribed by: Lisa Bar-Leib</p>	<p>Page 4</p> <p>- 4 -</p> <p>1</p> <p>2 BOIES, SCHILLER & FLEXNER LLP</p> <p>3 Attorneys for Barclays Capital, Inc.</p> <p>4 333 Main Street</p> <p>5 Armonk, NY 10504</p> <p>6</p> <p>7 BY: DAVID BOIES, ESQ.</p> <p>8</p> <p>9 STUTMAN TREISTER & GLATT LLP</p> <p>10 Attorneys for Elliott Management</p> <p>11 1901 Avenue of the Stars</p> <p>12 12th Floor</p> <p>13 Los Angeles, CA 90067</p> <p>14</p> <p>15 BY: WHITMAN L. HOLT, ESQ.</p> <p>16 REBECCA S. REVICH, ESQ.</p> <p>17 (TELEPHONICALLY)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 3</p> <p>- 3 -</p> <p>1</p> <p>2 A P P E A R A N C E S :</p> <p>3 JONES DAY</p> <p>4 Attorneys for the Movant, LBHI</p> <p>5 222 East 41st Street</p> <p>6 New York, NY 10017</p> <p>7</p> <p>8 BY: ROBERT W. GAFFEY, ESQ.</p> <p>9</p> <p>10 HUGHES HUBBARD & REED LLP</p> <p>11 Attorneys for Movant, James W. Giddens, SIPC Trustee</p> <p>12 One Battery Park Plaza</p> <p>13 New York, NY 10004</p> <p>14</p> <p>15 BY: NEIL J. OXFORD, ESQ.</p> <p>16</p> <p>17 QUINN EMANUEL URQUHART & SULLIVAN, LLP</p> <p>18 Attorneys for the Movant, Official Committee of Unsecured</p> <p>19 Creditors</p> <p>20 51 Madison Avenue</p> <p>21 22nd Floor</p> <p>22 New York, NY 10010</p> <p>23</p> <p>24 BY: JAMES C. TECCE, ESQ.</p> <p>25 SUSHEEL KIRPALANI, ESQ.</p>	<p>Page 5</p> <p>- 5 -</p> <p>1 P R O C E E D I N G S</p> <p>2 THE COURT: Be seated, please. Good morning.</p> <p>3 MR. KIRPALANI: Good morning, Your Honor. Susheel</p> <p>4 Kirpalani from Quinn Emanuel on behalf of the creditors'</p> <p>5 committee. I believe Mr. Gaffey has one housekeeping matter.</p> <p>6 And then we're going to call our witness. Thank you.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. GAFFEY: Your Honor, we're able to eliminate the</p> <p>9 need for one witness today, Mr. Guarnuccio, because we've</p> <p>10 reached a stipulation with Barclays as to a fact. If I could</p> <p>11 read it into the record --</p> <p>12 THE COURT: Go right ahead.</p> <p>13 MR. GAFFEY: -- because our witness -- we've agreed</p> <p>14 that: "Barclays Capital Inc. (Barclays) and Movants stipulate</p> <p>15 that if called to testify at trial, Michael Guarnuccio of</p> <p>16 PricewaterhouseCoopers would testify as follows:</p> <p>17 "Michael Guarnuccio recalls that at some time in</p> <p>18 September 2008, after the Barclays/Lehman transaction closed,</p> <p>19 he spoke with a Paul Exall. And Mr. Exall stated that he</p> <p>20 believed the two billion dollar estimate was for bonus payments</p> <p>21 only not for severance pay."</p> <p>22 And if Mr. Boies can confirm that's our agreement --</p> <p>23 MR. BOIES: Yes, Your Honor.</p> <p>24 MR. GAFFEY: -- we can excuse Mr. Guarnuccio as a</p> <p>25 witness.</p>

Exhibit 53

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

June 22, 2010

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

<p style="text-align: right;">Page 34</p> <p style="text-align: center;">- 34 -</p> <p>1 recognized that there may be issues around that, so we're clear 2 that if there were regulatory issues around the excess 3 collateral in 15c3-3 that we would take other value in 4 consideration. 5 But, certainly, as you said, the clearance box was a 6 critical part that Friday. And the exchange-traded derivatives 7 were a critical part both to the regulators, the OCC, and to 8 us. And if you had pulled any of those pieces -- and I'm sure 9 there's others but I think you mentioned those three or those 10 three have come up -- I don't think we would have gone forward 11 with the deal, no. 12 MR. BOIES: I have no more questions, Your Honor. 13 THE COURT: Is there any redirect? 14 MR. GAFFEY: Yes, Your Honor, a little redirect. 15 REDIRECT EXAMINATION (AS ON RECROSS) 16 BY MR. GAFFEY: 17 Q. Mr. Diamond, would you -- the book is still in front of 18 you, isn't it? 19 A. Yep. 20 Q. Would you turn to tab M-16, please? That's the transcript 21 of the analyst call. And Mr. Boies asked you about the 22 statement at page 5 concerning where Mr. Varley describes the 23 buffer. Do you recall that? 24 A. I do. Yes, sir. 25 Q. And he asked you to confirm, and you did, your view that</p>	<p style="text-align: right;">Page 36</p> <p style="text-align: center;">- 36 -</p> <p>1 provision that Barclays would assume liabilities for 2 compensation and for cure, correct? 3 A. That went back and forth over a period of time. And I 4 know there were times when it was in and time when it was out 5 and different accounting treatment. I don't recall this point 6 exactly how the accounting treatment on that worked. 7 Q. Okay. Well, apart from the accounting treatment, sir, I'm 8 talking about the deal that was made, the deal that was 9 described to the Court. To your knowledge, sir, on the 17th of 10 September, the same day as this analyst call, do you know if 11 anyone told this Court that Barclays would be assuming cure 12 liabilities in an amount of approximately 1.5 billion dollars? 13 A. I don't recall any specifics about that, no, sir. 14 Q. Okay. You do recall that Barclays did agree to assume 15 cure liabilities in roughly that amount? 16 A. My understanding is different. But I'm not an expert in 17 that. But my understanding is there was a period of time for 18 Barclays to come back and confirm. But I certainly don't 19 expect to be an expert for you, sir, on that specific part of 20 the contract, no. 21 Q. My question goes more, sir, to what is said in different 22 venues. In the analyst call, nobody mentions the assumption of 23 cure liabilities. We've agreed on that, yes? 24 A. I don't know, sir. 25 Q. Okay. Well, do you -- was any thought given, to your</p>
<p style="text-align: right;">Page 35</p> <p style="text-align: center;">- 35 -</p> <p>1 the buffer being described there is the buffer between trading 2 assets and trading liabilities. Do you recall that? 3 A. Yes, sir. 4 Q. And that's your understanding of what Mr. Varley meant 5 when he referred to the buffer here? 6 A. Yes, sir. 7 Q. And you viewed the statements made at the analyst call as 8 indicative of the openness and transparency that Barclays 9 brought to this transaction, is that correct? 10 A. I don't recall doing that. But we certainly -- 11 Q. Then I'll ask you that now. 12 A. We certainly try and be as open and straightforward as we 13 can, yes. 14 Q. Okay. And in discussing the buffer and the match or 15 mismatch between trading assets and trading liabilities, is 16 there a reason, sir, that no one in the entire analyst call 17 ever mentioned the assumption of liabilities for compensation 18 and cure? 19 A. I don't recall if that question came up, no. 20 Q. I can represent to you, sir, and we can take the time if 21 you'd like, there's no reference to it anywhere in the analyst 22 call. Was there a reason for that? 23 A. I don't recall. 24 Q. You do agree, sir, that the transaction that was being 25 announced and the one that this Court was told about included a</p>	<p style="text-align: right;">Page 37</p> <p style="text-align: center;">- 37 -</p> <p>1 recollection, of discussing the assumption of liabilities for 2 compensation and cure before the analyst call? 3 MR. BOIES: Objection, Your Honor. Scope. I didn't 4 go into compensation and cure at all with this witness. 5 MR. GAFFEY: This goes to the assum -- 6 THE COURT: Well, you didn't, Mr. Boies. But you did 7 spend some time going through the analyst call. And I think 8 that what was considered at the time is fair game and you 9 opened the door to that as far as I'm concerned. 10 Q. So, sir, was any consideration given prior to the analyst 11 call of saying anything in it about the assumption of 12 liabilities by Barclays for compensation and for cure? 13 A. Well, one of the reasons it's difficult -- two reasons 14 it's difficult for me to go back in that amount of detail, if 15 you would give me a chance to say that, is, one, I had been in 16 New York negotiating. And as you know, John Varley and Chris 17 Lucas had put the presentation together. And I joined on the 18 phone. So I don't know the specifics of whether that was 19 thought through or not. 20 And the second reason is, this was very, very early in the 21 process. And this was not the transaction that concluded. So 22 it doesn't -- a lot of this period of time doesn't have the 23 memory of the actual deal that we did since this deal never 24 occurred. 25 Q. Okay.</p>